

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Respondent

Reg No: 2010-11650

Issue No: 3055, 3052

Case No:

[REDACTED]

Load No:

Hearing Date:

May 5, 2010

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services ("DHS" "Department") request for a disqualification hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on May 5, 2010. Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3178(5). Norman McKenzie (OIG) appeared on behalf of the Department.

ISSUE

Whether Respondent committed a Food Assistance Program ("FAP") Intentional Program Violation ("IPV").

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Respondent submitted Food Assistance Program (FAP) applications on November 16, 2006 and September 10, 2007. Department Exhibit 1 pages 13 through 19, Exhibit 2 pages 21 through 27
2. The Respondent was a FAP recipient for the period from November 1, 2006 through October 31, 2007.
3. The Respondent failed to report that her spouse and the father of her children lived in the household. Department Exhibits 1 and 2
4. The unreported member, [REDACTED], employer reported his current address as [REDACTED]. Department Exhibit 6 page 30
5. The unreported member, [REDACTED], also gave [REDACTED] [REDACTED] as his address on his driver's license. Department Exhibit 7 page 36
6. The unreported member, [REDACTED], also was listed as the legal owner and taxpayer of record of the property [REDACTED] [REDACTED]. Department Exhibit 38 and 39
7. The unreported member was working and receiving earned income during the period from November 1, 2006 through October 31, 2007. Department Exhibit 3 pages 30 through 34
8. The unreported member received earned income of approximately \$30,695.99 for the period from November 1, 2006 through October 31, 2007. Exhibit 3
9. The Respondent failed to report the unreported member's income to the Department in a timely manner.

10. The OIG issued an alleged fraud report indicating that the claimant was totally ineligible for assistance, which was unsigned by the OIG employee preparing the report. Exhibit 9, pages 2 and 3
11. No FAP budgets were provided or introduced at the hearing to demonstrate that the claimant was totally ineligible for benefits and to verify the amount of the FAP over-issuance.
12. On each FAP application, the Respondent acknowledged her responsibility to report changes in income or resources to the Department within 10 days of the change. Department Exhibits 1 and 2
13. Under the Penalties of Perjury, the Respondent attested that the information provided on the FAP application was true, correct, and complete. Department Exhibit 1, page 19 and Exhibit 2 page 27.
14. The Department sent Respondent written notice of the intentional program violation over-issuance and repay agreement, which the Respondent did not sign. Department Exhibit 5, pages 9 through 12
15. This is Respondent's first intentional program violation or willful withholding of information needed to determine Respondent's eligibility for public assistance.

#### CONCLUSIONS OF LAW

The Food Assistance Program, formerly known as the Food Stamp ("FS") program, is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations ("CFR"). The Department of Human Services ("DHS"), formerly known as the Family Independence Agency, administers the FAP program pursuant to MCL

400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Manual (“PRM”).

Group composition is the determination of which persons living together are included in the FAP program group. The Department must determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. Thus to establish FAP group composition, the Department must consider in part, who lives together and their relationship(s), and whether the people living together purchase and prepare food together or separately. BEM 212, p. 1 Living together means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. BEM 212, p. 2

In this case, the Department requested a disqualification hearing to establish an over-issuance of benefits as a result of an Intentional Program Violation (“IPV”). The Department requests that the Respondent be disqualified from benefits and seeks recoupment of the over-issuance. An over-issuance (“OI”) occurs when a client group receives more benefits than they are entitled to receive. BAM 700, p. 1 A claim is the resulting debt created by the over-issuance of benefits. BAM 700, p. 1 Recoupment is an action to identify and recover a benefit OI. BAM 700, p. 1

During the eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities through explanation at application/determination interviews, notices and pamphlets, as well as acknowledgments on the application. BAM 700, p. 2 Applicants and recipients are required to provide complete and accurate information and to notify the Department of

any changes in circumstances that may affect eligibility or benefit amount within 10 days. BAM 105, p. 7 Incorrect or omitted information causing an OI can result in cash repayment or benefit reduction. BAM 700, p. 5

A suspected IPV means an OI exists for which all three of the following conditions exist:

- The customer **intentionally** failed to report **or intentionally** gave incomplete or inaccurate information needed to make a correct benefit determination, **and**
- The customer was clearly and correctly instructed regarding his or her reporting responsibilities, **and**
- The customer has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities. BAM 720, p. 1

IPV is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1

A recipient found to have committed an intentional program violation is disqualified for one year for the first violation. PAM 720, p. 13

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance ("OI"). PAM 700, p. 1 When a client receives more benefits than s/he is entitled to, the Department must take reasonable steps to promptly correct any overpayment of public assistance benefits, whether due to department or client error. PAM 705, 720 and 725

In the record presented, the Department [Office of Inspector General] established through clear and convincing evidence that the Respondent committed a FAP Intentional Program Violation when she, on at least two occasions, failed to report that her spouse and the father of her children lived in the residence. In addition, the

Respondent failed to report the earned income of the unreported group member which was necessary to determine her eligibility for public assistance. There is no evidence on the record of any justifiable excuse for the Respondent's failure to report.

Since this is the Respondent's first intentional program violation, the 12-month penalty in effect at the time of said violation is applicable.

The Department, however, did not prove the amount of the over-issuance the claimant is alleged to have received. BAM provides the following:

*Failure to Show Monthly Income Amounts*

Under Bam 720 the amount of the over-issuance is the amount of benefits the group actually received minus the amount the group was eligible to receive. The Department must use the actual income for the over-issuance month in determining the over-issuance. At the hearing the Department failed to provide information regarding the actual income received in each of the relevant months. Therefore this ALJ cannot make a finding regarding the over-issuance amount.

A review of the evidence presented follows. The Department provided a summary of all FAP benefits received during the fraud period and the amounts of FAP benefits received do total \$4,696; however, there is no indication of the amount of FAP benefits the Claimant was entitled to receive. The schedule or report merely shows what the Claimant was paid. The Department also submitted an unsigned OIG report which concluded that the claimant was totally ineligible to receive FAP benefits. The unsigned report does not contain the basis for its conclusion. There was no FAP budget submitted for the group, which analyzed eligibility for benefits based on the unreported income which would demonstrate the ineligibility based on excess income. These proofs are inadequate to prove the over-issuance sought by the Department and,

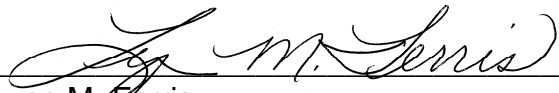
accordingly, it is found the Department has not met its burden of proof to substantiate the amount of the over-issuance.

DECISION AND ORDER

The Administrative Law Judge, based upon clear and convincing evidence, finds that the Respondent committed her first FAP Intentional Program Violation for the period from November 1, 2006 through October 31, 2007. In addition, it is found that the Department did not establish the amount of the over-issuance.

Accordingly, it is ORDERED:

1. The Respondent is personally ineligible to participate in the FAP program for 12 months.
2. The disqualification period shall be applied immediately.
3. The Respondent shall **not** be required to reimburse the Department the FAP benefits it alleged were ineligibly received by the Claimant in the amount of \$4696.00.

  
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Lynn M. Ferris  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed 06/11/10

Date Mailed: 06/11/10

**NOTICE:** The law provides that within 30 days of receipt of the above Decision and Order, the respondent may appeal it to the circuit court for the county in which he/she lives.

LMF/dj

cc:

