

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2010-32605
Issue No: 3023
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 25, 2010
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on April 22, 2010. After due notice, a telephone hearing was held on Tuesday, May 25, 2010.

ISSUE

Whether the Department of Human Services (Department) has properly determined the Claimant's Food Assistance Program (FAP) eligibility?

FINDINGS OF FACT

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

- (1) The Claimant received FAP benefits before May 1, 2010. Department Exhibit 1.
- (2) On [REDACTED], the Claimant was convicted of welfare fraud. Department Exhibit 4.

(3) On 4/15/2010, the Department notified the Claimant that she was disqualified from receiving FAP benefits from May 1, 2010 through April 30, 2011. Department Exhibit 1.

(4) The Department received the Claimant's request for a hearing on April 22, 2010, protesting her disqualification from receiving FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp 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 or Department), administers the FAP program pursuant to MCL 400.10, et seq., and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

An overissuance is the amount of benefits issued to the client group in excess of what they were eligible to receive. BAM 705. The amount of the overissuance is the amount of benefits the group actually received minus the amount the group was eligible to receive. BAM 720. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700.

A court or hearing decision that finds a client committed an intentional program violation (IPV) disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720.

Clients that commit an intentional program violation are disqualified for a standard disqualification period except when a court orders a different period. Clients are disqualified for standard periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720. Courts may order non-standard disqualification periods, but if the court does not address disqualification in its order, the standard period applies. BAM 720.

In this case, the Claimant was convicted of welfare fraud and was ordered to pay ██████ in restitution. The record of conviction for welfare fraud established that an IPV had taken place. The Court did not address disqualification, and the Department applied the standard one year disqualification for a first violation.

The Claimant testified that she incorrectly assumed that the notice of her disqualification was an attempt by the Department to recoup an additional ██████, which had been paid to the Court to satisfy its restitution order. This misinterpretation was settled during the hearing.

The Claimant argued that the one year disqualification would have an exceptionally harsh impact on her life, and that an exception should be made in her case. However, the claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has established that it properly disqualified the Claimant from the FAP, and that she was not eligible to receive FAP benefits.

The Department's disqualification from the Food Assistance Program is AFFIRMED. It is SO ORDERED.

/s/ _____
Kevin Scully
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 4, 2010

Date Mailed: June 4, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

KS/vc

cc:

