

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2011-11805

Issue No: 3055



Delta County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a telephone hearing was held on July 5, 2011, at which Respondent personally appeared and provided testimony.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and whether Respondent received an overissuance of benefits that the department is entitled to recoup?

FINDINGS OF FACT

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

1. The department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of benefits received by Respondent as a result of Respondent having committed an Intentional Program Violation (IPV); the OIG also requested that Respondent be disqualified from receiving program benefits.
2. Respondent signed Assistance Application (DHS-1171) on July 18, 2006, acknowledging that she understood her failure to give timely, truthful, complete and accurate information about her circumstances could result in a civil or criminal action or an administrative claim against her. Respondent listed her son as residing with her. (Department Exhibits 7-13).

3. On July 25, 2006, the department mailed Respondent an Eligibility Notice showing her FAP had been determined based on her reported household size of 3. (Department Exhibit 16).
4. On October 15, 2006, the department received a Verification of Employment showing Respondent's son was employed by [REDACTED] [REDACTED] from November 2, 2006 through November 16, 2006. This income was not reported to the department. (Department Exhibits 22-23).
5. Based on an AFF Match in March 20, 2007, the department discovered that Respondent's son was working. (Department Exhibit 30).
6. On March 22, 2007, the recoupment specialist interviewed Respondent regarding Respondent's son's residence. Respondent stated that her son had not lived with her since he turned 19 years old. Respondent's son turned 19 on March 11, 2005. Respondent had been receiving FAP benefits for her son since August 2006. (Department Exhibits 2-3, 19).
7. On September 29, 2009, the department received a Verification of Employment showing Respondent's son was employed at Laurel Janitorial, Inc. from November 24, 2006 through May 30, 2007. This income was not reported to the department. (Department Exhibits 20-21).
8. Respondent received [REDACTED] in FAP benefits during the alleged fraud period of August 2006 through March, 2007. If the household size had been properly reported and budgeted by the department, Respondent would only have been eligible to receive [REDACTED] in FAP benefits. (Department Exhibits 30-59).
9. Respondent failed to report her change in household size in a timely manner, resulting in a FAP overissuance for the months of August 2006 through March, 2007, in the amount of \$1,011.00. (Department Exhibit 20-26).
10. Respondent was clearly instructed and fully aware of the responsibility to report all employment and income to the department.
11. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
12. Respondent had not committed any previous intentional program violations of the FAP program. (Department Hearing Request).

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (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 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) and the Reference Tables Manual (RFT).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the department has asked that the respondent be disqualified from receiving benefits. The department's manuals provide the following relevant policy statements and instructions for department caseworkers.

When a customer client group receives more benefits than they are entitled to receive, the department must attempt to recoup the overissuance. BAM 700. A suspected intentional program violation means an overissuance where:

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

The department suspects an intentional program violation when the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility. There must be clear and convincing evidence that the client acted intentionally for this purpose. BAM 720.

The department's Office of Inspector General processes intentional program hearings for overissuances referred to them for investigation. The Office of Inspector General represents the department during the hearing process. The Office of Inspector General requests intentional program hearings for cases when:

- benefit overissuances are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
 - the total overissuance amount is \$1000 or more,
 - or

- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed an intentional program violation 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 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. This is the respondent's first intentional program violation.

In this case, the department has established that Respondent was aware of the responsibility to report all changes in household size to the department. Respondent completed an application for assistance on July 18, 2006, and reported her son was in her household. Respondent's signature on the assistance application certifies that she was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims.

On March 22, 2007, the department questioned Respondent regarding her son's employment income. Respondent stated that her son had not lived in her household since March 11, 2005, when he turned 19. Respondent failed to timely report her son was no longer in her household and listed him as still being in her household when she filed her assistance application on July 18, 2006.

Respondent testified that she had had a stroke last year and was unable to remember anything. After hearing the evidence, Respondent stated that her son had the jobs as indicated by the evidence, but that he had never told her about the jobs. Based on Respondent's testimony that the stroke was last year, there is no indication that she had apparent physical or mental impairments in July 1996 that would have limited her understanding or ability to fulfill her reporting responsibilities. Moreover, when questioned about her failure to report her son's income on March 22, 2007, she voluntarily told the department that he had not lived with her since March 2005.

This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that Respondent committed a first intentional violation of

the FAP program, resulting in a [REDACTED] overissuance from August 2006 through March, 2007. Consequently, the department's request for FAP program disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Respondent committed an Intentional Program Violation of the FAP program by failing to report that her son was not living with her while receiving benefits for the period of time from August 2006 through March, 2007.

Therefore, it is ordered that:

1. Respondent shall be personally disqualified from participation in the FAP program for one year, but the rest of the household may participate. This disqualification period shall begin to run immediately as of the date of this order.
2. The department is entitled to recoup the overissuance of benefits Respondent ineligibly received. Respondent is ORDERED to reimburse the department for the \$1,011.00 FAP overissuance caused by her intentional program violation.

It is SO ORDERED.

/s/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 7/7/11

Date Mailed: 7/7/11

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.

VLA/ds

[REDACTED]