

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 20111237
Issue No: 3055
Case No: [REDACTED]
Hearing Date:
June 1, 2011
Antrim 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 upon a request from the Department of Human Services (Department) to schedule a hearing for an alleged intentional program (IPV). The Respondent personally appeared and provided testimony.

ISSUE

Did the Respondent commit a Food Assistance Program (FAP) intentional program violation (IPV)?

FINDINGS OF FACT

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

1. The Respondent applied for Food Assistance Program (FAP) benefits on June 30, 2005, and reported to the Department that she does not purchase and prepare food with her mother, who lives in her household.
2. The Respondent received Food Assistance Program (FAP) benefits from January 1, 2006, through December 31, 2006.
3. The Respondent did not report any rental income to the Department.

4. Respondent was aware of the responsibility to report all household employment and income to the Department and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. On September 28, 2010, the Department sent the Respondent notice that of an alleged Food Assistance Program (FAP) intentional program violation.

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).

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.

In this case, the Respondent applied for Food Assistance Program (FAP) benefits on June 30, 2005. The Respondent noted on her application that she was not applying for benefits for her mother, a resident of her household, and reported that she did not purchase and prepare food with her mother. The Respondent received Food Assistance Program (FAP) benefits from January 1, 2006, through December 31, 2006.

The Respondent did not report any rental income to the Department.

The Department received shelter expense verification documents from another client that revealed the Respondent's mother as the lessor of residential property. The Department verified that the Respondent's mother receives rental income from her income tax return.

The Department's representative testified that the Respondent has a vested interest in the rental property of her mother, and that rental income received by her mother is countable income towards her benefit group.

This Administrative Law Judge finds that the Department failed to establish that the Respondent does not purchase and prepare food separately from her mother.

This Administrative Law Judge finds that the Department failed to establish that the Respondent received any rental income.

Under BAM 720, the amount of the overissuance 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 overissuance month in determining the overissuance. 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 overissuance amount.

Furthermore, if income received by the Respondent's mother is countable income towards the Respondent's benefit group, the Department failed to determine her eligibility to receive Food Assistance Program (FAP) including the mother in the benefit group. The Department determined that the Respondent received an overissuance of benefits based on the income revealed in the mother's tax return. The Department determined that the Respondent was eligible for a monthly Food Assistance Program (FAP) allotment of \$74 when she actually received \$223. If the Respondent's mother and the rental income that the Department verified from her income tax return are applied to the Respondent's eligibility to receive benefits, as a group of three she would have been eligible for a monthly FAP allotment of \$195.

The Respondent reported to the Department that her mother lived in her household, but that she was not requesting benefits for her mother. The Respondent reported that she purchases and prepares food separately from her mother. The Department did not present evidence that these assertions were questioned at the time the Respondent submitted her application for benefits. The Department failed to establish that the Respondent receives income from rental properly managed by her mother.

However, even if the Respondent does have a vested interest in the rental income, the Department has failed to establish that the Respondent intentionally withheld this income from the Department. The Respondent may have reasonably believed that her mother's income should be excluded from consideration as the income of non-benefit group member. Therefore, the Department has failed to establish a Food Assistance Program (FAP) intentional program violation.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, decides that the department has not established that the Respondent received a \$2,005 overissuance of Food Assistance Program (FAP) benefits.

Accordingly, the department's request for disqualification and recoupment is denied.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 16, 2011

Date Mailed: June 17, 2011

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 90 days of the filing of the original request.

The Respondent may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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/tg

cc:

