

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

IN THE MATTER OF:



Reg. No: 2011-26604

Issue No: 3055



Genesee 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 19, 2011, at which Respondent did not appear. This matter having been initiated by the department and due notice having been provided to Respondent, the hearing was held in Respondent's absence in accordance with Bridges Administrative Manual, Item 725.

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 January 8, 2008, 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. (Department Exhibits 13-20).

3. On November 10, 2009, the department received an Out-of-State Match showing Respondent was making FAP purchases outside of Michigan from at least March 1, 2009 through August 31, 2009. Due to the out-of-state purchases, Respondent's residency was suspect and a fraud referral was made. (Department Exhibits 10-11).
4. A review of Respondent's EBT History shows Respondent's FAP Purchases beginning May 4, 2009, were solely in the state of North Carolina. (Department Exhibits 41-42).
5. On February 7, 2011, subsequent to a LEXIS search showing Respondent's current address in Florida, a letter was mailed to Respondent notifying her of the fraud investigation concerning the issuance of ineligible public assistance benefits. (Department Exhibits 22-31).
6. On February 16, 2011, the department received the Benefit Summary from North Carolina showing Respondent received FAP in North Carolina beginning in May 2009. (Department Exhibit 51).
7. Respondent received [REDACTED] in FAP benefits during the alleged fraud period of May 2009 through October, 2009. If Respondent had reported she was also receiving benefits from North Carolina, Respondent would not have been eligible to receive FAP benefits. (Department Exhibits 32-42).
8. Respondent failed to report his concurrent receipt of benefits from North Carolina, resulting in a FAP overissuance for the months of May 2009 through October, 2009, in the amount of [REDACTED]. (Department Exhibits 32-42).
9. Respondent was clearly instructed and fully aware of the responsibility to report all changes affecting benefits to the department.
10. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the reporting responsibilities.
11. Respondent had not committed any previous intentional program violations of the FAP program. (Department Hearing Request).
12. A Notice of Disqualification Hearing was mailed to Respondent at the last known address and was returned by the U.S. Post Office as undeliverable. Respondent's last known address is: [REDACTED].

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 Program Administrative Manual (BAM), the Program 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. As a result of the IPV, the department properly requested that Respondent be disqualified from participation in the FAP program for ten years.

In this case, the Notice of Disqualification was returned as undeliverable. However, for FAP only, the OIG pursues an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable. BAM 720.

On November 10, 2009, the department received an Out-of-State Match showing Respondent had been using her FAP benefits in North Carolina from at least March 1, 2009 through August, 2009. A Fraud Referral was made to determine Respondent's residency. On February 16, 2011, the department received information from North Carolina showing Respondent had been receiving food stamps from North Carolina since May 2009. A review of Respondent's FAP purchase history shows she used her FAP benefits exclusively in North Carolina beginning in May 2009.

The Administrative Law Judge finds the department has established by clear and convincing evidence that Respondent intentionally failed to report that she moved to North Carolina and was receiving FAP benefits concurrently from Michigan and North Carolina. Respondent's signature on the Assistance Application dated January 8, 2008, certifies that she was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. Because of Respondent's failure to report that she was living in North Carolina and receiving duplicate benefits, she received an overissuance of \$1,600.00 and the department is entitled to recoup.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides Respondent committed an Intentional Program Violation with a concurrent receipt of FAP program benefits for the period of time from May 2009 through October, 2009.

Therefore, it is ORDERED that:

- (1) Respondent shall be personally disqualified from participation in the FAP program for ten years, 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 [REDACTED] FAP overissuance caused by her Intentional Program Violation (IPV).

It is SO ORDERED.

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

Date Signed: 7/22/11

Date Mailed: 7/22/11

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]