

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

IN THE MATTER OF:



Reg. No: 201126610
Issue No: 3055
Case No: [REDACTED]
Hearing Date May 11, 2011
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Kandra Robbins

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 (department) request for a disqualification hearing. After due notice, a telephone hearing was held on May 11, 2011. 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 400.3187(5). At the time the hearing was convened, there was no mail returned as undeliverable. When mail was delivered later in the day on May 11, 2011, the mail sent to the respondent was returned as undeliverable.

ISSUE

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

Whether the respondent committed an IPV of the Family Independence Program (FIP) and whether the respondent received an overissuance of benefits that the department is entitled to recoup?

Whether the respondent committed an IPV of the Medical Assistance Program (MA) and whether the 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 the respondent as a result of the respondent having committed an IPV; the OIG also requested that the respondent be disqualified from receiving program benefits.
2. Respondent signed Assistance Application (DHS-1171) on August 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 Exhibit 1, pages 14-28).
3. Respondent reported that she intended to stay in Michigan on the application. (Department Exhibit 1, pages 14-28).
4. The Office of Inspector General indicates that the time period they are considering the fraud period is September 1, 2008, through May 31, 2009. (Department Exhibit 1, pages 2).
5. The respondent made all EBT FAP purchases exclusively in the State of Tennessee from September 2, 2008 through June 2, 2009. (Department Exhibit 1 pages 56-58).
6. The respondent applied for food stamps in the State of Tennessee beginning on May 29, 2009. (Department Exhibit 1, pg 41-42).
7. The respondent began receiving benefits in State of Tennessee in May 2009. (Department Exhibit 1, pg 41-42).
8. During the alleged fraud period, the respondent was issued [REDACTED] in FAP benefits from the State of Michigan (Department Exhibit 1 page 2).
9. Respondent was clearly instructed and fully aware of her responsibility to report any changes in residency to the department.
10. Respondent was physically and mentally capable of performing his reporting responsibilities.
11. Respondent has not committed any previous intentional FAP program violations.
12. A Notice of Disqualification Hearing was mailed to the respondent at the last known address and was returned by the U.S. Post Office as undeliverable. Respondent's last known address is: 1908 Burlington Cir. Columbia, TN 38401.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, et seq. The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, et seq., and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), State Emergency Relief Manual (ERM) and the Bridges Reference Manual (BRM).

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.

The FIP and MA portion of the hearing request is dismissed without prejudice because the notice of the hearing was returned to the Post Office as undeliverable. MAC R 400.3130(5); BAM 725.

In this case, the respondent intentionally failed to report earned income and that she moved to Tennessee. Respondent's signature on this document 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 Tennessee, she received an overissuance and the department is entitled to recoup [REDACTED]. Furthermore, for the months of May and June of 2009, the Respondent received benefits from both the State of Tennessee and the State of Michigan.

All of the benefits issued during this period were in error as the claimant was residing in another state and receiving benefits in another state and would not have been eligible to receive benefits if she had reported.

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. Consequently, the department's request for FAP disqualification and full restitution must be granted.

Based on clear and convincing evidence, it is found that the respondent intentionally committed the program violation as she applied to receive benefits from the State of Tennessee while she was already receiving benefits from the State of Michigan.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed a first intentional FAP program violation.

Therefore it is ORDERED that:

1. Respondent shall be personally disqualified from participation in the FAP for one year. This disqualification period shall begin to run immediately as of the date of this Order.
2. Respondent is responsible for full restitution of the [REDACTED] FAP overissuance caused by her IPV.
3. The FIP portion of the hearing request is dismissed without prejudice.
4. The MA portion of the hearing request is dismissed without prejudice.

/s/

Kandra Robbins
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 23, 2011

Date Mailed: May 23, 2011

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.

KR/ar

cc:

[REDACTED]