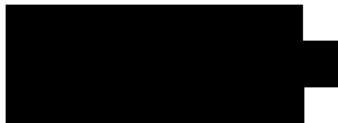


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201128224
Issue No: 3055
Case No: [REDACTED]
Hearing Date: October 26, 2011
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 October 26, 2011. The Respondent personally appeared and provided testimony.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?

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 completed an application for public assistance on November 20, 2008 (DHS 1171), acknowledging her responsibility to report any changes in her income, resources, or living arrangement to the department within ten days of the change. (Department Exhibits 7-22).
3. The Respondent was scheduled to lose her unemployment insurance benefits as of December of 2008.
4. The department budgeted the Respondent's FAP benefits by excluding her unemployment benefits from her income.
5. The Respondent was told to inform the department if there was an unexpected extension of her unemployment benefits.

6. The Respondent did receive an extension of her unemployment benefits and continued to receive income as a result of those benefits.
7. The department was unaware that the Respondent received an extension of her unemployment benefits and was therefore not able adjust her budget to reflect said income.
8. Because the Respondent's FAP budget was not altered to reflect her income from unemployment, Respondent received an overissuance of FAP benefits in the amount of [REDACTED] for the period of December 1, 2008 through August 31, 2009. (Department Exhibits 60-80).
9. Respondent was clearly instructed and fully aware of the responsibility to report true and accurate information to the department.
10. Respondent had not committed any previous intentional program violations.
11. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.

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 Program Reference Manual (PRM).

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 contends that the Respondent failed to notify the department that she received an extension of her unemployment benefits and therefore continued to receive income from those benefits. At the hearing, the Respondent testified that she in fact called the department to inform them that she had received the extension. She produced phone records showing that she had called her case worker several times during the month of December of 2008; after she found out her

unemployment benefits were going to be extended. The Respondent testified that she left messages for her worker informing her that she had received the extension but that she never received a return phone call. This Administrative Law Judge does not find clear and convincing evidence that the Respondent intentionally withheld information from the department for purposes of trying to avoid a reduction of her FAP benefits. The evidence of record tends to support the Respondent's testimony that she attempted to contact the department but was unable to do so. This Administrative Law Judge credits the testimony of the Respondent and finds that she did attempt to contact the department but that the department did not follow through on its end. The Respondent has therefore not committed an intentional program violation of the FAP program.

However, this Administrative Law Judge does find that there has been an overissuance of FAP benefits due to an error on behalf of the department. Although the Respondent took the appropriate steps to inform the department of the extension of her benefits, the Respondent did receive an overissuance of FAP benefits due to a department error. Based on policy, the department is required to recoup that overissuance even if the overissuance results from department error. BAM 700. Therefore, the department is required to recoup the overissuance in this matter.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, does not find clear and convincing evidence that the Respondent committed an intentional program violation of the FAP program. The department's claim to establish an IPV is **HEREBY DISMISSED**.

However, the Administrative Law Judge does find that the Respondent was overissued FAP benefits, and there is a current balance due and owing to the department in the amount of [REDACTED]

Accordingly, the Administrative Law Judge **ORDERS** that the Respondent shall reimburse the department for FAP benefits ineligibly received, and the department shall initiate collection procedures in accordance with department policy.

/s/

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: November 7, 2011

Date Mailed: November 8, 2011

2011-28224/CSS

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.

CSS/cr

cc:

