

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-3256  
Issue No: 3055

[REDACTED]  
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 May 24, 2011. Claimant and his wife 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 November 27, 2007 acknowledging that he understood his failure to give timely, truthful, complete and accurate information about his circumstances could result in a civil or criminal action or an administrative claim against him. (Department Exhibits 25-36).

3. On November 28, 2007, the department mailed Respondent an Eligibility Notice informing Respondent he would be receiving [REDACTED] a month from December 2007 through November, 2008, based on unearned income of [REDACTED] a month. (Department Exhibit 45).
4. On April 16, 2008, Respondent reported that his wife had returned to work at 12 hours a week. (Department Exhibit 52).
5. The department mailed Claimant a Food Assistance Simplified Reporting Requirements and Eligibility Notice on April 16, 2008. The Notice showed his FAP benefit would change to [REDACTED] a month based on his wife's reported income and showed no unearned income was budgeted. The Notice also instructed Respondent to report any changes, including supplemental unemployment. The Simplified Reporting Requirements instructed Respondent that as long as a member of his household had earned income, the only change he was required to report was when his income exceeded [REDACTED] (Claimant Exhibits 2-4).
6. The department mailed Respondent a Notice of Case Action on June 24, 2008, informing him that because a group member's unemployment compensation benefits started or increased, his FAP benefit would be reduced to [REDACTED] a month. (Claimant's Exhibit 5).
7. On July 23, 2008, the department mailed Respondent an Eligibility Notice showing no earnings and an increase in FAP benefits because Respondent's wife's unemployment benefits had ended. Respondent was instructed that if earnings started again, to notify the department within 10 days. (Department Exhibit 66).
8. Based on a Wage Match on November 11, 2008, the department discovered Respondent's wife's had returned to work and respondent had not notified the department. (Department Exhibits 6, 8).
9. On September 4, 2008, the department received a Verification of Employment from Hazel Enterprises, Inc. (Best Western), showing Respondent's wife was working and had been employed since January 21, 2008. This income was not reported to the department. (Department Exhibits 10-14).
10. Respondent received [REDACTED] in FAP benefits during the alleged fraud period of March 2008 through April, 2008 and [REDACTED] in FAP benefits during the alleged fraud period of August 2008 through November, 2008. If the income had been properly reported and budgeted by the department, Respondent would only have been eligible to receive [REDACTED] in FAP benefits. (Department Exhibits 67-72, 77-79, 81-97).

11. Respondent failed to report his wife's income in a timely manner, resulting in a FAP overissuance for the months of March 2008 through April, 2008, in the amount of [REDACTED] and a FAP overissuance for the months of August 2008 through November, 2008, in the amount of [REDACTED] for a total of [REDACTED]. (Department Exhibits 67-72, 77-79, 81-97).
12. Respondent was clearly instructed and fully aware of the responsibility to report all employment and income to the department.
13. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
14. 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 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.

In this case, the department has established that Respondent was aware of the responsibility to report all income and employment to the department. Department

policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. BAM 105. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Respondent completed applications for assistance on November 27, 2007. On this application, Respondent reported that his wife was laid off and receiving unemployment benefits and he was not employed.

On April 16, 2008, Respondent notified the department that his wife had returned to work at 12 hours a week. Based on Respondent's wife's income, the department changed Respondent from a change reporter to a simplified reporter, as indicated by the Food Assistance Simplified Reporting Requirements the department mailed to Respondent on April 16, 2008. On September 4, 2008, the department received a Verification of Employment from Best Western showing Respondent's wife had been employed at Best Western since January 21, 2008 and Respondent failed to report the income. Because Respondent failed to report the change in income within 10 days, Respondent received an overissuance of FAP benefits from March 2008 through April, 2008 of [REDACTED].

During the hearing, Respondent's wife testified that she was working full time from April through November 2008. However, when the department received documentation showing Respondent's wife's unemployment ended June 2008, the department mailed Respondent an Eligibility Notice dated July 23, 2008, showing no unemployment benefits or income budgeted and instructed Respondent to notify the department if earnings started again. Respondent failed to notify the department of his wife's income.

Respondent's signature on the Assistance Application from November 27, 2007, certifies that he was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. 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 total of [REDACTED] overissuance. 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 by failing to report that his wife was working while receiving benefits for the period of time from March 2008 through April, 2008 and for the period of time from August 2008 through November, 2008.

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

