

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

IN THE MATTER OF:



Registration No: 201139627
Issue No: 3055
Case No: [REDACTED]
Hearing Date: November 8, 2011
Genesee County DHS #6

Administrative Law Judge: Corey A. Arendt

HEARING DECISION

This matter is before the undersigned Administrative Law Judge in accordance with 7 CFR 273.16, MCL 400.9, MCL 400.37, and 1999 AC, R 400.3130, on the Department of Human Services' (the Department's) request for hearing. After due notice, a hearing was held on November 8, 2011, at which Respondent failed to appear. The hearing was held in Respondent's absence in accordance with Bridges Administrative Manual (BAM) 720, pp 9-10. The Department was represented by the Office of Inspector General (OIG).

ISSUE

In dispute is whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP), thereby receiving an overissuance of benefits that the Department is entitled to recoup.

FINDINGS OF FACT

Based on the clear and convincing evidence pertaining to the whole record, I find as finds as material fact:

1. The Department's OIG filed a request for hearing to establish an over issuance of FAP benefits received as a result of a determination that Respondent committed an IPV. The agency further requested that Respondent be disqualified from receiving further program benefits for a period of ten years.
2. On April 2, 2010 the Respondent signed an assistance application (DHS-1171). On the application, the Respondent indicated he had not received benefits from any other state. (Department's Exhibit 1).
3. By signing this application, Respondent acknowledged 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's Exhibit 1).

4. Between February 2009 and June 2009; October 2009 and March 2010; July 2010 and December 2010; and February 2011 and June 2011, the Respondent received benefits from the State of Tennessee. (Department's Exhibit 3).
5. Between July 1, 2010 and March 31, 2011, the Respondent received FAP benefits from the state of Michigan. (Department's Exhibit 2).
6. From September 26, 2010 through December 14, 2010, Respondent used his Michigan Electronic Benefits Transfer (EBT) card exclusively in the State of Tennessee. (Department Exhibit 4).
7. As a result of Respondent's concurrent receipt of both Michigan and Tennessee food assistance, as well as the permanent use of the EBT card in the State of Tennessee, the Respondent received an over issuance of FAP benefits from July 2010 through March 2011, in an amount totaling [REDACTED]. (Department's Exhibits 2).
8. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to report all changes in circumstances to the Department within ten days of any change in his circumstances, including the concurrent receipt of food assistance benefits from another State.
9. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with his reporting responsibilities.
10. This was the first determined IPV committed by Respondent.

CONCLUSIONS OF LAW

The FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in 7 CFR 273.1 *et seq.* The Department administers the FAP under MCL 400.10, *et seq.*, and Rules 400.3001 through 400.3015. Agency policies pertaining to the FAP are found in the BAM, Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230A.

In the present matter, the Department requested a hearing to establish an overissuance of FAP benefits, claiming that the overissuance was a result of an IPV committed by

Respondent. Further, the Department asked that Respondent be disqualified from the FAP for a period of ten years.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222, p 1. A person cannot receive FAP in more than one State for any month. BEM 222, p 2. Generally, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level within ten days of the change. BEM 105, p 7. For example, moving from one State to another, or informing the agency that benefits are also being concurrently received from another State.

Here, the OIG presented unequivocal evidence that from July 2010 through March 2011 the Respondent received food assistance benefits from the State of Tennessee and the State of Michigan. Respondent was not entitled to concurrently receive FAP benefits. BEM 222, p 2. From July 2010 through March 2011, Respondent received FAP benefits totaling [REDACTED]. Respondent made no effort to inform the Department of his concurrent receipt of FAP benefits.

When a client or group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1. A suspected IPV is defined as 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. [BAM 720, p 1.]

An IPV is suspected by the Department when a client intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing a reduction of, program eligibility or benefits. BAM 720, p 1. In bringing an IPV action, the agency carries the burden of establishing the violation with clear and convincing evidence. BAM 720, p 1.

An overissuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the overissuance was referred to an agency recoupment specialist, whichever is later. This period ends on the month before the benefit is corrected. BAM 720, p 6. The amount of overissuance

is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6.

Suspected IPV matters are investigated by the OIG. This office:

- Refers suspected IPV cases that meet criteria for prosecution to the appropriate prosecuting attorney.
- Refers suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System (MAHS).
- Returns non-IPV cases back to the Department's recoupment specialist.

BAM 720, p 9.

The OIG will request an IPV hearing when:

- Benefit overissuances are not forwarded to the prosecuting attorney's office.
- Prosecution of the matter is declined by the prosecuting attorney's office for a reason other than lack of evidence, and
- The total OI amount for the FAP is \$1000 or more, or
- The total OI amount is less than \$1000, and
 - The group has a previous IPV, or
 - The alleged IPV involves FAP trafficking, or
 - The alleged fraud involves concurrent receipt of assistance or
 - The alleged fraud is committed by a State/government employee.

BAM 720, p 10.

The OIG represents the Department during the hearing process in IPV matters. BAM 720, p 9.

When a client is determined to have committed an IPV, the following standard periods of disqualification from the program are applied (unless a court orders a different length of time):

- One year for the first IPV.
- Two years for the second IPV.
- Lifetime for the third IPV.

BAM 720, p 13.

Further, IPV's involving the FAP result in a ten-year disqualification for concurrent receipt of benefits (i.e., receipt of benefits in more than one State at the same time). BAM 720, p 13.

Based on the credible testimony and other evidence presented, I have concluded that the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter, resulting in an overissuance of FAP benefits from July 2010 through March 2011, in an amount totaling [REDACTED]. Further, because Respondent's IPV involved the concurrent receipt of benefits from two states (Tennessee and Michigan), the ten-year disqualification period is appropriate. BAM 720, p 13.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I find Respondent committed an intentional program violation by refusing or failing to report concurrent benefits.

It is therefore ORDERED THAT:

1. Respondent shall reimburse the Department for the FAP benefits ineligibly received as a result of his intentional program violation in the amount of [REDACTED].
2. Respondent is personally disqualified from participation in the FAP for ten years – the remainder of the group, if applicable, may continue to participate in the program to the extent eligible. The disqualification period will begin to run IMMEDIATELY as of the date of this order;

/s/_____

Corey A. Arendt
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: November 8, 2011

Date Mailed: November 9, 2011

2011-39627/CAA

NOTICE: Respondent may appeal this decision and order to the circuit court for the county in which he / she resides within 30 days of receipt of this decision and order.

CAA/cr

cc:

