

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

IN THE MATTER OF:



Reg. No: 2011-1241

Issue No: 3055



Missaukee 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 September 6, 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 March 15, 2007, 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 12-19).

3. On January 16, 2008, Respondent submitted her signed Shelter Verification (DHS-3688), reporting her new address in [REDACTED]. (Department Exhibit 20).
4. On March 31, 2009, the department was notified that Respondent had made all of her FAP purchases outside of Michigan from at least December 2008 through February 2009. Due to the duration and amount of these out-of-state transactions, the FAP household's current Michigan residency is suspect. Per the landlord, Respondent moved out shortly after applying in August or September 2008. (Department Exhibit 21).
5. An Electronic Benefits Transaction (EBT) history shows Respondent used her FAP benefits solely in Arizona beginning October 10, 2008. Prior to October 10, 2008, Respondent moved to [REDACTED] without informing the department and used her FAP benefits of [REDACTED] for the months of October 2008 through May, 2009 solely in [REDACTED]. (Department Exhibits 24-27).
6. Respondent received [REDACTED] in FAP benefits during the alleged fraud period of October 2008 through May, 2009. If Respondent had properly reported that she had moved to Arizona, Respondent would not have been eligible to receive FAP benefits. (Department Exhibits 24-27).
7. Respondent was clearly instructed and fully aware of the responsibility to report all changes within 10 days to the department.
8. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the reporting responsibilities.
9. 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 Reference Tables Manual (RFT).

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. As a result of the IPV, the department went forward with the FAP case and properly requested that Respondent be disqualified from participation in the FAP program for one year. 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 changes 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 an application for assistance on March 15, 2007. Prior to October 10, 2008, Respondent moved to Arizona without notifying the department. To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220. A resident is a person living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the state permanently or indefinitely. BEM 220. Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change, including address and shelter cost changes that result from the move. BAM 105. After Respondent moved from Michigan to Arizona, Respondent continued to receive FAP benefits from Michigan in the amount of [REDACTED] per month from October 2008 through May, 2009. Respondent used those FAP benefits solely in Arizona.

Respondent's signature on the Assistance Application from March 15, 2007, certifies that she 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 [REDACTED] overissuance from October 2008 through May, 2009. 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 she moved and was living in Arizona while receiving FAP benefits for the period of time from October 2008 through May, 2009.

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 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.

It is SO ORDERED.

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

Date Signed: 9/8/11

Date Mailed: 9/8/11

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]