

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

IN THE MATTER OF:



Registration No: 201133395
Issue No: 3055
Case No: [REDACTED]
Hearing Date: November 2, 2011
Kent County DHS

Administrative Law Judge: Suzanne D. Sonneborn

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 Mich Admin Code, R 400.3130, on the Department of Human Services' (the Department's) request for hearing. After due notice, a hearing was held on November 2, 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 its Office of Inspector General (OIG).

ISSUE

Whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP) and whether Respondent received an overissuance of FAP benefits that the Department is entitled to recoup?

FINDINGS OF FACT

Based on the clear and convincing evidence pertaining to the whole record, the Administrative Law Judge 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 FAP benefits for a period of one year.
2. Respondent signed an assistance application (DHS-1171) on March 27, 2008. (Department Exhibit 1)
3. By signing the assistance application, Respondent acknowledged his obligation to report changes in his circumstances and 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 Exhibit 1)

4. Respondent moved to the State of Georgia and failed to timely report that he was no longer a Michigan resident since July 2008. (Department Exhibit 3)
5. Respondent was employed from July 23, 2008 until November 17, 2009 at [REDACTED] in Stone Mountain, Georgia, using an address in Stone Mountain, Georgia. (Department Exhibit 3)
6. Respondent continued to use his EBT card exclusively in Georgia between August 7, 2008 and June 6, 2009. (Department Exhibit 4, 6)
7. As a result of Respondent's refusal or failure to properly report that he was no longer a Michigan resident, he received an over issuance of FAP benefits in the amount of [REDACTED] for the period September 1, 2008 through May 31, 2009. (Department Exhibits 6)
8. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to report all changes in circumstances, including his change of residency, to the Department within ten days of the occurrence, as required by agency policy.
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 Mich Admin Code, R 400.3001 through R 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 one year.

To be eligible for FAP benefits, a person must be a Michigan resident. For FAP purposes, a person is considered to be a Michigan resident if he is living in the State, except for vacationing, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p 1. Generally, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level, including a change in residency, within ten days of the change. BAM 105, p 7.

Here, the OIG provided unequivocal evidence that Respondent became a resident of Georgia as early as July 23, 2008, when he began employment in Georgia, using a Georgia residence as his address. On that date, he was no longer eligible to receive FAP benefits. BEM 220, p 1. However, Respondent continued to receive such benefits from the State of Michigan between the period September 1, 2008 and May 31, 2009.

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); and 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; and 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.

A disqualified client remains a member of an active benefit group, as long as he or she continues to live with the other group members – those members may continue to receive benefits. BAM 720, p 12.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Here, the OIG provided credible and sufficient testimony and other evidence establishing that Respondent was no longer a resident of Michigan after July 23, 2008. Furthermore, it was also established that he continued to receive FAP benefits during the period September 1, 2008 through May 31, 2009 – a period in which he was residing in Georgia. Respondent was, or should have been, fully aware of his

responsibility to timely report his change of residence. Moreover, Respondent's signature on his assistance application established that he was, or should have been, fully aware that the intentional withholding or misrepresentation of information potentially affecting his eligibility or benefit level could result in criminal, civil, or administrative action. Finally, there was no evidence presented indicating that Respondent suffered from any physical or mental impairment that limited his ability to understand and fulfill his reporting responsibilities. See BEM 720, p 1.

Based on the credible testimony and other evidence presented, it is 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 in the amount of [REDACTED] for the period September 1, 2008 through May 31, 2009. Further, because this was Respondent's first IPV, the one-year disqualification period is appropriate.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that Respondent committed an intentional program violation by refusing or failing to report a change in State residency.

It is therefore ORDERED THAT:

- Respondent shall reimburse the Department for the FAP benefits ineligibly received as a result of his intentional program violation in the amount of [REDACTED]
- Respondent is personally disqualified from participation in the FAP for one year. The disqualification period will begin to run IMMEDIATELY as of the date of this order.

/s/ _____
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 2, 2011

Date Mailed: February 3, 2011

201133395/SDS

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

SDS/cr

cc:

