

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

IN THE MATTER OF:



Reg. No: 201147675
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 October 2, 2008 and December 8, 2008 (DHS 1171), acknowledging his responsibility to report any changes in his income, resources, or living arrangement to the department within ten days of the change. (Department Exhibits 7-38).
3. On his applications, the Respondent did not indicate that he and his son were receiving income from the Social Security Administration. (Department Exhibits 7-38).
4. The Respondent and his son began receiving SSI benefits in April of 2009. (Department Exhibit 43-48).

5. The Respondent did not inform the department that he began receiving SSI benefits until a redetermination dated September 3, 2009 and on said redetermination did not inform the department of his son's receipt of SSI benefits. (Department Exhibits 39-42).
6. As a result of the Respondent's failure to report his and his son's income, Respondent received an overissuance of FAP benefits in the amount of [REDACTED] for the period of June 1, 2009 through September 1, 2009. (Department Exhibits 51-59).
7. Respondent was clearly instructed and fully aware of the responsibility to report true and accurate information to the department.
8. Respondent had not committed any previous intentional program violations.

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, Respondent failed to notify the department that he was receiving income through SSI benefits. At the hearing, the Respondent testified that he was suffering from very serious medical issues at the time and that he simply forgot to report this income. The Respondent provided medical records at the hearing that showed he had been in and out of the hospital during the time period in question. There were even times when he was unresponsive for periods of several days. The medical records read into the record show that the Respondent was admitted to the hospital several times starting in April of 2009 for renal failure.

Based on the medical records and the Respondent's testimony as to his medical condition during the time period in question, this Administrative Law Judge does not find that there is clear and convincing evidence to show that the Respondent has committed an IPV. It is reasonable to believe that the Respondent simply failed to remember to inform the department of his SSI income based on the health problems he was experiencing at the time. It is also reasonable to believe that his wife did not report the change because at the time, her mind was more focused on the severe health problems her husband was experiencing. Based on the evidence of record, this Administrative Law Judge does not find that the Respondent had the requisite intention to withhold information from the department for the purpose of preventing the reduction of his FAP benefits.

However, this Administrative Law Judge does find that there has been an overissuance of FAP benefits due to an error on behalf of the Respondent. Although the Respondent did not have the intention to withhold information for the purposes of preventing a reduction in his benefits, the end result is that the Respondent did not inform the department in a timely fashion of the fact that he and his son were receiving SSI benefits and as a result did receive an overissuance of FAP benefits for the period of June 1, 2009 through September 1, 2009 in the amount of [REDACTED] as a result of the Respondent's error. The department is therefore entitled to recoup the amount of the overissuance.

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

2011-47675/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:

