

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

IN THE MATTER OF:

[REDACTED]

Registration No: [REDACTED]
Issue No: 3055
Case No: [REDACTED]
Hearing Date: November 16, 2011
[REDACTED]

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. After due notice, a hearing was held on November 16, 2011, at which Respondent appeared and provided testimony. 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 OIG further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year.
2. On April 12, 2005, Respondent completed and signed an assistance application (DHS 1171) and, in doing so, 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)

3. In his April 12, 2005 assistance application, Respondent reported earned income in the form of his receipt of a recent pay check in the amount of [REDACTED]. (Department Exhibit 1)
4. On October 9, 2006, the Department obtained verification of Respondent's employment earnings with Arcadia Health Care Services, which earnings for the months of September 2005, October 2005, November 2005, December 2005 and March 2006 exceeded those reported in Respondent's assistance application and exceeded the [REDACTED] income limit over which Respondent's FAP group was obligated to report to the department. (Department Exhibits 3-7)
5. As a result of Respondent's receipt of more earned income than reported in Respondent's assistance application, Respondent received an over issuance of FAP benefits in the amount of [REDACTED] for the months of September 2005, October 2005, November 2005, December 2005 and March 2006. (Department Exhibits 3-7)
6. Respondent has not committed any previous intentional program violations of the FAP program.

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. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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.

Generally, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level, including a change in income amount, within ten days of the change. BAM 105, p. 7. With respect to earned income, a client must report any of the following: starting or stopping employment; changing employers; change in rate of pay; and a change in work hours of more than five hours per week that is expected to continue for more than one month. BAM 105, p. 7. 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 over issuances 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 [REDACTED] or more, or
- The total OI amount is less than [REDACTED], 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 testimony and other evidence establishing that Respondent received employment earnings from Arcadia Health Care Services for the months of September 2005, October 2005, November 2005, December 2005 and March 2006 which exceeded those reported in Respondent's assistance application and exceeded the [REDACTED] income limit over which Respondent's FAP group was obligated to report to the department. The OIG further established that, as a result of Respondent's receipt of more employment earnings than reported, Respondent received an over issuance of FAP benefits in the amount of [REDACTED] for the months of September 2005, October 2005, November 2005, December 2005 and March 2006.

At the hearing, Respondent testified that he was aware of his responsibility to report his increased earnings to the department. However, Respondent did not provide a reasonable explanation for his failure to do so.

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 months of September 2005, October 2005, November 2005, December 2005 and March 2006. 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 timely report an increase in his employment earnings.

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/ _____
[REDACTED]
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 12/02/11

Date Mailed: 12/05/11

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/sc

cc: [REDACTED]