

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2011-8755
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: February 17, 2011
Wayne County DHS (55)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on February 17, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly denied Claimant's application dated 10/28/10 due to three alleged prior Intentional Program Violations (IPV) by Claimant.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 10/28/10, Claimant applied for Food Assistance Program (FAP) benefits.
2. At the time of Claimant's application, Bridges, the DHS database, indicated that Claimant had three prior Intentional Program Violation (IPV) disqualifications.
3. DHS applied a lifetime FAP disqualification against Claimant based on the three prior IPV disqualifications.
4. Claimant conceded committing two prior IPV, one in 1989 and a second in 2004.

5. On 11/22/10, Claimant requested a hearing disputing the processing of her FAP benefit application, specifically disputing the lifetime FAP benefit disqualification.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

Suspected IPV means an OI exists for which all three of the following conditions exist:

- 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 at 1.

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms. *Id.*

DHS is to apply the following disqualification periods to recipients determined to have committed IPV:

- One year for the first IPV.
- Two years for the second IPV.
- Lifetime for the third IPV. *Id.* at 13.

In the present case, DHS took some action on Claimant's application dated 10/28/10 requesting FAP benefits; DHS did not specify if the action was a denial or member disqualification. It is known that the DHS action was based in part on a finding that

Claimant had three prior IPV disqualifications and was banned for life from receiving FAP benefits. It is clear that three IPV disqualifications results in a lifetime disqualification. Claimant conceded two prior IPV but denied there was ever a third.

The only evidence offered by DHS to establish a previous IPV was an investigative report alleging fraud by Claimant. Had the hearing involved the issue of whether an IPV occurred, the investigation report would have been appropriate evidence. The issue in the present hearing involved whether three prior IPV's were already established. As stated above, appropriate proof would be a copy of a court decision, administrative decision or a signed DHS-830. DHS furnished no such evidence to establish that Claimant committed any prior IPV's.

DHS also relied on their database, Bridges, having a record of three prior IPV disqualifications against Claimant. The undersigned cannot accept that Claimant committed three prior IPV merely because Bridges had such a record. DHS failed to verify when the prior IPV's occurred and how they were established. Merely because the DHS database had a record of three prior IPV's does not make it any more certain that Claimant committed three IPV's. It is found that DHS failed to establish three prior IPV's against Claimant. Accordingly it is found that DHS erred in processing Claimant's application dated 10/28/10 by applying a lifetime fraud disqualification against Claimant.

It should be noted that this decision does not conclude that Claimant committed only two prior IPV's or that Claimant is entitled to a future of disqualification-free FAP benefits as long as another IPV is not committed. The undersigned merely finds that for purposes of the application dated 10/28/10, DHS did not establish that three IPV's occurred and that Claimant should be lifetime disqualified from receiving FAP benefits. At some point in the future, if DHS can prove that Claimant committed three prior IPV's, DHS may still impose a lifetime FAP disqualification. If such an action occurs, in response, Claimant may request an administrative decision to dispute such a finding.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly applied a lifetime disqualification against Claimant for purposes of her application dated 10/28/10. DHS is to re-evaluate Claimant's eligibility for FAP benefits effective 10/28/10 and to supplement Claimant for any FAP benefits not received as a result of the improper disqualification. The actions taken by DHS are REVERSED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

20118755/CG

Date Signed: 2/23/2011

Date Mailed: 2/23/2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CG/jlg

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