

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-17449
Issue No.: 1052, 3052
Case No.: [REDACTED]
Hearing Date: April 18, 2012
Genesee County DHS (02)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, Mich Admin Code, Rules ("MAC R") 400.3130 and 400.3178 upon the Department of Human Services' request for a disqualification on hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Wednesday, April 18, 2012. The Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3178(5). [REDACTED], Regulation Agent of the Office of Inspector General, appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Respondent committed Food Assistance Program ("FAP") Intentional Program Violation ("IPV") for the period from July through November 2003?

FINDINGS OF FACT

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

1. The Respondent submitted a State Emergency Relief ("SER") application on May 21, 2003 stating she had no income. (Exhibit 1, pp. 14 – 16)
2. On August 29, 2003, the Respondent submitted a Child Development and Care ("CDC") application stating she had no income. (Exhibit 1, pp. 17 – 20)

3. The Respondent submitted a public assistance application seeking FAP, cash assistance ("FIP"), and medical assistance ("MA") benefits on December 9, 2003 stating she had no income. (Exhibit 1, pp. 21 – 27)
4. On July 12, 2004, the Department received a Verification of Employment for the Respondent confirming employment starting August 21, 2003 with the first paycheck on August 29, 2003. (Exhibit 1, p. 32)
5. Based on the employer's compensation report, the Respondent received gross monthly earnings in the amounts of \$112.50 in August 2003 and \$270.00 and \$52.50 in September 2003. (Exhibit 1, p. 33)
6. Pursuant to the Quarterly Wage Match Report ("wage match"), the Respondent received gross earnings from this employer in the amount of \$435.00 for the months of July through September 2003, matching the total gross earnings based on the employer's compensation report for August and September 2003. (Exhibit 1, pp. 33, 36)
7. Pursuant to a wage match from another employer, for this same period, the Respondent received \$2,409.00 in gross earnings from an employer. (Exhibit 1, p. 36)
8. On this same date, July 12th, the Department received a Verification of Employment for the Respondent confirming employment starting October 20, 2003 through December 22, 2003. (Exhibit 1, p. 34)
9. Based on this employer's wage report, the Respondent received gross monthly earnings of \$330.21 for October 2003, \$687.06 and \$608.58 for November 2003, and \$499.05 for December 2003. (Exhibit 1, p. 35)
10. The Respondent was a FAP recipient for the period at issue, July 2003 through November 2003.
11. For the period at issue, the Respondent received cash assistance in the amount of \$489.00/month.
12. The Respondent's earned income was not originally considered in her FAP budgets for the period from July through November 2003.
13. In determining the over-issuance for the period, the Department used the monthly earned income figures of \$803.00 for July through September and \$380.00 for October and November 2003. (Exhibit 1, pp. 39 – 58)

14. As a result, the Department determined that the Respondent received a FAP over-issuance in the amount of \$1,030.00 for the period from July through November 2003. (Exhibit 1, pp. 38 – 62)
15. The Department sent Respondent written notice of the intentional program violation over-issuance and repay agreement which the Respondent did not sign. (Exhibit 1, pp. 7 – 10)
16. This is Respondent's first intentional program violation or wilful withholding of information needed to determine Respondent's eligibility for public assistance.

CONCLUSIONS OF LAW

As a preliminary matter, the OIG seeks a FIP over-issuance in the amount of \$1,695.00 due to an Intentional Program Violation ("IPV") for the months of July through November 2003. Pursuant to MAC R 400.3130(5), an IPV hearing will be conducted with or without the individual or authorized representative present, if the hearing notice was not returned by the post office as undeliverable. In this case, the hearing packet was returned by the U.S. Postmaster as undeliverable. Accordingly, the IPV in the amount of \$1,695.00 under the FIP program will not be adjudicated and the request for hearing is DISMISSED.

All countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BEM 500. The Department must consider the gross benefit amount before any deduction, unless Department policy states otherwise. BEM 500.

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

- The customer **intentionally** failed to report **or intentionally** gave incomplete or inaccurate information needed to make a correct benefit determination, **and**
- The customer was clearing and correctly instructed regarding his or her reporting responsibilities, **and**
- The customer has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities. BAM 720.

An IPV is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720.

7 CFR 273.16(c) provides in part that an intentional program violation shall consist of having intentionally:

- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). (emphasis added)

The Code of Federal Regulations further provides criteria for determining an intentional program violation as:

The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section. 7 CFR 273.16(e)(6)

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the over-issuance. BAM 700. When a client receives more benefits than s/he is entitled to, the Department must take reasonable steps to promptly correct any overpayment of public assistance benefits, whether due to department or client error. BAMs 705, 720 and 725. IPV is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720. A recipient found to have committed an intentional program violation is disqualified for one year for the first violation. BAM 720.

In the record presented, the Department [Office of Inspector General] established through clear and convincing evidence that the Respondent intentionally withheld, concealed facts, or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits when she failed to report income from employment which was necessary to determine her eligibility for public assistance. There is no evidence on the record of any justifiable excuse for the Respondent's failure to report her income.

That being stated, the earned income figures used in determining the FAP over-issuance are not accurate. For example, for the months of July through August 2003, the Department relied on the wage match report for 3rd quarter earnings of \$2,409.00

(Exhibit 1, p. 36) which were evenly divided over the three months, resulting in \$803.00 in earned income being used for those months. Upon further review, the record shows that in addition to this income, the Claimant also had earnings of \$112.50 (Exhibit 1, p. 33) in August, and \$322.50 (Exhibit 1, p. 33) in September. These earnings were not considered. In October, the gross earnings used were \$380.00 for both October and November 2003. Again, upon closer review, the Claimant earnings in October were \$330.21 (Exhibit 1, p. 35) and \$1,295.64 (Exhibit 1, p. 35) in November 2003. It is unclear where the \$380.00 was derived from but it is clear that wrong earned income was used for October and November 2003 when the Department determined the OI. Ultimately, the Department established an IPV; however, the FAP OI amount is not correct.

This is the Respondent's first intentional program violation, therefore, the 12-month penalty in effect at the time of said violation is applicable.

DECISION AND ORDER

The Department established, through clear and convincing evidence, the Respondent committed her first FAP IPV for the period from July through November 2003. The Department failed to establish through clear and convincing evidence the amount of the FAP OI for the period from July through November 2003. Accordingly, the Department's determination of a FAP OI of \$1,030.00 for the period of July through November 2003 is AFFIRMED in part/REVERSED in part.

Accordingly, it is ORDERED:

1. The Department's determination of FAP IPV for the months of July through November 2003 is AFFIRMED.
2. The Respondent is personally ineligible to participate in the FAP program for 12 months.
3. The disqualification period shall be applied immediately.
4. The Department's determination of a \$1,030.00 FAP over-issuance is REVERSED.
5. The Department shall recalculate the FAP OI for the months of July through November 2003 using corrected earned income figures in accordance with Department policy.

6. The Department shall notify the Respondent at the last known address of the revised FAP Order for the period of July through November 2003.
7. The Department's request for a hearing regarding the FIP OI is DISMISSED as the hearing packet was returned as undeliverable by the U.S. Postal Service.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: April 23, 2012

Date Mailed: April 23, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,

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- typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
- the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative Hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/cl

cc:

