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



Reg No.: 2012-28388 Issue No.: 3052 Case No.: Hearing Date: April 18, 2012 Genesee County DHS (02)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administ rative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, Mich Ad min Code, Rules ("MAC R") 400.3130 and 400.3178 upon the Department of Human Services ' request for a disqualificati 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), MA C R 400.3130(5), or MAC R 400.3178(5).

ISSUE

Whether the Respondent committed Food Assi stance Program ("FAP") Intentional Program Violation ("IPV") for the period from April and May 2010.

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 public assistance application seeking FAP benefits on July 15, 2009. (Exhibit 1, pp. 6 13)
- 2. The Respondent was a FAP recipien t for the months of April and May 2010.
- 3. For the period at issue, Apr il and May 2010, the Respondent was a resident of Texas. (Exhibit 1, pp. 18 22)

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- 4. The Respondent completed an app lication for p ublic assistance, acknowledging her responsibility to report changes in circumstances, to include changes in residency t o the Department within ten days of the change. (Exhibit 1, p. 13)
- 5. The Respondent failed to notify t he Department of her change in residency.
- 6. The Respondent used her Michigan FA P benefits in Te xas for the period of April and May 2010. (Exhibits 1, pp. 14 17)
- As a result, the Respondent received an over-issuance of FAP benefits for the period of April and May 2010 in t he amount of \$1,052.00. (Exhibit 1, p. 23)
- 8. The Department sent Respondent written notice of the intentional program violation over-issuance and repay agr eement which the Respond ent did not sign. (Department Exhibits 6 9)
- 9. This is Respon dent's first intent ional program vio lation or willful withholding of information needed to determine Respondent's eligibility for public assistance.

CONCLUSIONS OF LAW

The Food Assistanc e Program, formerly k nown as the Food Stamp program, is established by the Food Stam p Act of 1977, as amended, and is implem ented by the federal regulations contained in Title 7 of the Code of Federal Regulations ("CFR"). The Department of Human Services, formerly k nown as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq.* and MAC R 400.3001-3015. Departmental polic ies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

In this case, the Department requested a dis qualification hearing to establish an overissuance of benefits as a result of an Int entional Pr ogram Viol ation ("IPV"). The Department requests that t he Respondent be disqualified from benefits and seek s recoupment of the over-issuance. An over-i ssuance ("OI") occurs when a c lient group receives more benefits than they are entitled to receive. BAM 700. A claim is the resulting debt created by the over-issuanc e of benefits. BAM 700. Recoupment is an action to identify and recover a benefit OI. BAM 700. During the elig ibility determination and while the c ase is active, clients are repeatedly reminded of reporting responsibilities through explanation at application/determination interviews, notices an d

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pamphlets, as well as acknowledgments on the application. BAM 700. Applicants and recipients are required to pr ovide complete and accurate information and to notify the Department of any changes in circumstances that may affect eligibility or benefit amount within 10 days. BAM 105. Inco rrect or omitted information causing an OI can result in cash repayment or benefit reduction. BAM 700.

To be eligible for benefits, a person must be a Michigan resident. BEM 220. A person is a resident if s/he:

- is not receiving assistance from another state; and
- is living in Michigan, except for a temporary absence, **and**
- intends to remain in the state permanently or indefinitely.

BEM 220

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 inaccu rate inform ation 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 underst anding or ability to fulfill their reportin g responsibilities. BAM 720.

An IPV is suspected when there is clear and convincing evidence t hat the client has intentionally withheld or misr epresented information for t he purpose of establishing, maintaining, increasing or preventing reduc tion 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 established through clear and c onvincing evidence that the Respondent lived in Texas dur ing the period at i ssue, April and May 2010, and continued t o use her Michigan F AP ben efits. There is no evidence on the record of any justifiable ex cuse for the R espondent's failure to report her change in residency. The Department is entitled to recoup the \$1,052.00 FAP over-issuance for the period from April and May 2 010. This is the Respondent's first intentional program violation, therefore, the 12-m onth 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 months of April and May 2010.

Accordingly, it is ORDERED:

- 1. The Respondent is personally inel igible to partici pate in the FAP program for 12 months.
- 2. The disqualification period shall be applied immediately.
- 3. The Respondent shall be required to reimburse the Department the FAP benefits ineligibly received in the amount of \$1,052.00 for the months of April and May 2010.

Collein M. Mamilka

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

Date Signed: April 19, 2012

Date Mailed: April 19, 2012

NOTICE: Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order . MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion 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.

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

- A rehearing <u>MAY</u> 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,
 - 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

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