

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201235593
Issue No: 3055
Case No: [REDACTED]
Hearing Date: May 17, 2012
Lapeer 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 May 17, 2012, at which Respondent 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 March 4, 2009 (DHS 1171), acknowledging his responsibility to report any changes in his income, resources, or living arrangements to the department within ten days of the change. (Department Exhibits 6-21).
3. The Respondent's wife, [REDACTED], was added to his FAP case on September 1, 2010. (Department Exhibit 2).
4. When contacted by the department, the Respondent's wife stated that she moved out of Respondent's house in October 2010 and that she did not plan on returning to the home. (Department Exhibits 3, 24, 26).

5. The Respondent did not inform the department that his wife was no longer living at his residence.
6. Because the Respondent did not inform the department that his wife was no longer living at their residence, the department contends that the claimant committed an intentional program violation of the FAP program and as such received an overissuance of FAP benefits in the amount of [REDACTED] for the period of November 1, 2010 through June 30, 2011. (Department Exhibit 2).
7. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
8. Respondent has not previously committed any 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, the department contends that the Respondent should have informed the department that his wife was no longer living at his residence and was therefore no longer eligible to be part of the FAP group. The Respondent received [REDACTED] in FAP benefits during the period of November 1, 2010 through June 30, 2011. The department contends that had the Respondent's wife been removed from his FAP case, the Respondent would only have been entitled to [REDACTED] in FAP benefits during the above-mentioned time period. Therefore, the Respondent received an overissuance of [REDACTED] in FAP benefits as a result of the alleged IPV.

The Respondent testified that during this time period, his wife was living in and out of their house as she was often in Ohio. He testified that she was in Ohio because she was attempting to obtain custody of her children and the matter was being litigated in Ohio courts. He stated that she would be in Ohio for 2 to 3 weeks and back at his home

for 2 to 3 weeks. He further testified that for the period of November 2010 through January 2011, his wife was living out of his house because they were having marriage difficulties. The Respondent's wife was contacted by the department and stated that she moved out of her husband's home in October 2010 and that she did not intend on returning. She further asked to be removed from his case. The Respondent testified that he thought that his wife may have made these statements for purposes of qualifying for Medicaid. The Respondent testified that he thought that his FAP benefits would decrease if his wife was removed from the case.

The Administrative Law Judge finds that the evidence shows that the Respondent committed an intentional program violation of the FAP program. The statement given by the Respondent's wife and the address information obtained by the department support the contention that the Respondent's wife was living in Ohio during the time period in question and, therefore, should have not been included in the Respondent's group. The Respondent testified that during the time in question, although his wife was in Ohio monthly, she spent 60 to 70% of the time at his home. The Administrative Law Judge does not find the Respondent's testimony credible, especially in light of the statement given to the department by his wife. Accordingly, the Administrative Law Judge finds that the department has shown by clear and convincing evidence that the Respondent committed an intentional program violation that resulted in an overissuance of FAP benefits in the amount of [REDACTED] for the time period of November 1, 2010 through June 30, 2011.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds clear and convincing evidence that the Respondent committed an Intentional Program Violation by failing to notify the department that his wife was no longer living in his home.

Therefore, it is HEREBY ORDERED that:

1. The Respondent shall reimburse the department for FAP benefits ineligibly received as a result of his intentional program violation in the amount of [REDACTED]
2. The Respondent is personally ineligible to participate in the FAP program for the period of one year. The disqualification period shall be applied immediately.

/s/ _____
Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 29, 2012

Date Mailed: May 30, 2012

201235593/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:

