

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-48079
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: June 21, 2012
County: Cheboygan County

Administrative Law Judge: Vicki L. Armstrong

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, Rule 400.3130, on the Department of Human Services' (the Department's) request for hearing. After due notice, a 3-way telephone hearing was held on June 21, 2012. Respondent personally appeared and provided testimony. The Department was represented by an agent of its Office of Inspector General (OIG).

ISSUE

In dispute was whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP), thereby receiving an overissuance of benefits.

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 overissuance of FAP benefits received as a result of a determination that Respondent committed an IPV. The agency further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year. (Department's Exhibits 2-3; OIG representative's hearing testimony, June 21, 2012).
2. Respondent signed an assistance application (DHS-1171) on March 7, 2011. Respondent included on this application his permanent mailing address as [REDACTED]. (Department's Exhibits 12-23).

3. By signing this application, Respondent acknowledged 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's Exhibits 12-23; OIG representative's hearing testimony).
4. Between March 1, 2011, and February 28, 2012, Respondent received FAP benefits from the State of Michigan totaling [REDACTED] (Department's Exhibits 1-2; OIG representative's hearing testimony).
5. During the period March 1, 2011, and February 28, 2012, Respondent was living in [REDACTED] and used his Michigan FAP benefits solely in [REDACTED] (Department's Exhibits 2, 24-29; OIG representative's hearing testimony).
6. Because Respondent failed to inform the Department that he had moved to Florida, while receiving FAP benefits from Michigan, he thus received an overissuance of FAP benefits totaling [REDACTED]. (Department's exhibits 2, 24-29; OIG representative's hearing testimony).
7. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to timely report all changes in circumstances to the Department, including his move out of state to [REDACTED]. (Department's Exhibit 1; OIG representative's hearing testimony.)
8. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with her reporting responsibilities.

CONCLUSIONS OF LAW

The hearing and appeals process for applicants and recipients of public assistance in Michigan is governed by the Mich Admin Code, Rules 400.901 through 400.951, in accordance with federal law. An opportunity for hearing must be granted to an applicant who requests a hearing because his claim for assistance is denied or not acted on with reasonable promptness, and to any recipient who is aggrieved by Department action resulting in suspension, reduction, discontinuance, or termination of assistance. Rule 400.903(1). An applicant or recipient holds the right to contest an agency decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department must provide an administrative hearing to review the decision and determine its appropriateness. Bridges Administrative Manual (BAM) 600, p 1.

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 the Mich Admin Code, Rules 400.3001 through 400.3015. Agency policies pertaining to the FAP are found in the BAM, Bridges

Eligibility Manual (BEM), and Reference Tables Manual (RFT). The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230A.

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, because this was Respondent's first-determined infraction, the agency asked that he be disqualified from participation in the FAP for one year. (Department's Exhibits 2-3).

It is well settled that a person cannot receive FAP in Michigan unless they are a resident of Michigan. BEM 220, p 1. Moreover, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level within ten days of the change. BAM 105, p 7.

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 demonstrating that Respondent, during the period March 1, 2011, and February 28, 2012, was residing in the State of Florida and Respondent used those FAP benefits solely in Florida.

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. (Emphasis added.)]

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).
- Returns non-IPV cases back to the Department's recoupment specialist.

BAM 720, p 9.

The OIG will request an IPV hearing when:

- Benefit overissuances 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 combined overissuance amount for the FAP is \$1000 or more, or
 - The total overissuance amount is less than \$1000, 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.
- 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; see also BEM 203, p 1.

Here, there was insufficient evidence presented to conclude, under the clear and convincing standard, that Respondent intentionally violated public assistance program requirements. Respondent testified credibly that he had not moved to Florida, had not changed his residency from Michigan to Florida, and was only in Florida caring for his sister and attempting to find a place for her so he could return home to Florida. Nevertheless, Respondent did receive an overissuance of FAP benefits in this case.

An overissuance is the amount of benefits provided to a client in excess of what he or she was entitled to receive. BAM 700, p 1; see also BAM 705, p 5. There are agency errors and client errors that result in overissuances. An agency error occurs when incorrect action is taken by the Department. BAM 700, p 3; BAM 705, p 1. A client error occurs when the client received more benefits than he or she was entitled to because the client provided incorrect or incomplete information to the Department. BAM 700, p 5. Regardless of who committed the error, however, the agency must attempt to recoup the overissued amount. BAM 700, p 1.

Generally, when a client is currently in an active FIP benefits case, the Department will seek to recoup the determined overissuance from those benefits. In those situations, it is the client who must file a timely request for hearing to contest the recoupment action. BAM 705, p 9. But, when an overissuance is determined and the client is not currently within an active benefits case, the Department must request a hearing to establish the outstanding debt. See BAM 705, p 9.

Overissuances on active programs are repaid by:

- Lump sum cash payments.
- Monthly cash payments (when court ordered).
- Administrative recoupment (benefit reduction). [BAM 725, p 4.]

Overissuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. BAM 725, p 7.

Repayment of an overissuance is the responsibility of:

- Anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred.
- A FAP authorized representative if they had any part in creating the FAP overissuance. BAM 725, p 1.

As discussed above, Respondent admitted under oath that he did receive the FAP benefits. The resultant overissuance would, however, be classified as client error for Respondent's failure to properly report his circumstances and should be pursued under the appropriate debt establishment/recoupment policies.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that Respondent received an overissuance of FAP benefits during the period March 1, 2011, and February 28, 2012. To this extent, the Department's determination in this matter is AFFIRMED.

However, it is further decided that the Department failed to sufficiently demonstrate, under the clear and convincing standard, that Respondent committed an IPV in this matter. To this extent, the agency's determination is REVERSED.

Within 10 days of the mailing of this decision and order, the Department IS ORDERED to initiate the following:

- In accordance with applicable law and policy, based on the information available to the agency at the time of hearing, and not inconsistent with this decision and order, determine the amount of overissuance received by Respondent during the period March 1, 2011, and February 28, 2012.
- Once the amount of overissuance is determined, pursue the matter in accordance with applicable law and policy as an overissuance based on client error.

/S/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 6/26/12

Date Mailed: 6/26/12

NOTICE: Respondent may appeal this decision and order to the circuit court for the county in which he or she resides within 30 days of receipt of this decision and order.

VLA/ds

■ [REDACTED]