

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

IN THE MATTER OF:



Reg. No: 201254736
Issue No: 3055
Case No: [REDACTED]
Hearing Date: September 13, 2012
Midland 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 September 30, 2012. The Respondent personally 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 September 15, 2010 (DHS 1171), acknowledging his responsibility to report any changes in his income, resources, or living arrangement to the department within ten days of the change. (Department Exhibits 14-29).
3. From December 23, 2010 through September 10, 2011, the Respondent used his EBT card (issued for use of his FAP benefits) exclusively in the state of Florida. (Department Exhibits 30-31).

4. From February 13, 2012 through April 21, 2012, the claimant used his EBT card for all purchases in the state of Florida with the exception of three transactions made in Michigan. (Department Exhibits 33-34).
5. The Respondent did not inform the department that he would be absent from the state for more than 30 consecutive days.
6. Because the Respondent did not inform the department of his absence from the state of Michigan, the department contends that the Respondent committed an intentional program violation of the FAP program which resulted in the Respondent receiving an overissuance of FAP benefits in the amount of \$ [REDACTED] from the periods of February 1, 2011 through September 30, 2011 and from April 1, 2012 through April 30, 2012.
7. Respondent was clearly instructed and fully aware of the responsibility to report true and accurate information to the department.
8. Respondent had not committed any previous intentional program violations.
9. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.

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 committed an intentional program violation by not reporting that he was absent from the state for more than 30 consecutive days. At the hearing, the Respondent testified that he had always intended to return to Michigan and that some of the reason for his extended stay in Florida was due to an illness and the fact that his mother lives there. The Respondent testified that he intended to return to Michigan and that he thought that because he did not change his address and did intend to return, that he did not have to report his absence. This Administrative Law Judge credits the Respondent's testimony in that he believed that his planned return to Michigan would negate his obligation to report his absence. However, as the Respondent was clearly out of the state for more than 30 consecutive days, he was in fact not eligible for FAP benefits through the state of Michigan. Therefore, the Respondent received an overissuance of FAP benefits in the amount of \$2,000.00 for the time period of February 1, 2011 through September 30, 2011 and from April 1, 2012 through April 30, 2012. Based on policy, the department is required to recoup that overissuance even if the overissuance results from client error and not an intentional program violation. BAM 700. Therefore, the department is required to recoup the overissuance in this matter.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, does not find clear and convincing evidence that the Respondent committed an intentional program violation of the FAP program. The department's claim to establish an IPV is HEREBY.

However, the Administrative Law Judge does find that the Respondent was overissued FAP benefits, and there is a current balance due and owing to the department in the amount of \$2,000.00. Therefore, the Respondent received an overissuance of FAP benefits as a result of client error in the amount of \$2,000.00.

Accordingly, the Administrative Law Judge ORDERS that the Respondent shall reimburse the department for FAP benefits ineligibly received, and the department shall initiate collection procedures in accordance with department policy.

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

Date Signed: October 2, 2012

Date Mailed: October 2, 2012

201254736/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:

