

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

IN THE MATTER OF:



Registration No: 201256979
Issue No: 3055
Case No: [REDACTED]
Hearing Date: October 23, 2012
Sanilac County DHS

Administrative Law Judge: Corey A. Arendt

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 hearing. After due notice, a telephone hearing was held on October 23, 2012 from Lansing, Michigan. The Department was represented by [REDACTED] [REDACTED] of the Office of Inspector General (OIG).

Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC) |

benefits that the Department is entitled to recoup?

2. Did Respondent commit an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC)? |

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 Department's OIG filed a hearing request to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC benefits during the period of January 1, 2011 through May 31, 2011.
4. Respondent was was not aware of the responsibility to report changes to the Department.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is January 1, 2011 through May 31, 2011.
7. During the alleged fraud period, Respondent was issued [REDACTED] in FIP FAP SDA CDC benefits from the State of Michigan.
8. The Department has has not established that Respondent committed an IPV.
9. A notice of disqualification hearing was mailed to Respondent at the last known address and was was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

The FAP (formerly known as the Food Stamp (FS) program) was 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 administers the FAP program pursuant to MCL 400.10, *et seq.*, and MCL 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

In the present matter, the Department requested a hearing to establish an over issuance of FAP benefits, claiming that the over issuance was a result of an IPV committed by Respondent.

To be eligible for FAP benefits, a person must be a Michigan resident. For FAP purposes, a person is considered to be a Michigan resident if he/she is living in the State, except for vacationing, even if he/she has no intent to remain in the State permanently or indefinitely. BEM 220, p 1. Generally, a client is responsible for reporting any change in circumstances, including a change in residency, that may affect eligibility or benefit level within ten days of the change. BEM 105, p 7.

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.

Here the OIG did not provide unequivocal evidence that Respondent failed to keep the Department apprised of the changes in her group and living quarters. The evidence the Department relied upon was solely of the hearsay variety. And while hearsay evidence may be admitted, it is up to the Administrative Law Judge to determine its weight. Because the burden of proof is clear and convincing, I cannot possibly find that hearsay evidence alone can meet the clear and convincing standard. The evidence presented included statements by a third party and a hospital sheet indicating the 5373 Spruce Dr. address. The same packet of evidence also included two documents submitted by the Respondent; a driver's license and an affidavit from the Respondent's grand mother. Both the driver's license and the affidavit indicate the 49 Fry St. Address. Because the evidence is conflicting and because the heart of the Department's evidence relies upon the hearsay statements made by a third party, I have no choice but to dismiss this matter without prejudice.

DECISION AND ORDER

Based upon the above findings of fact and conclusions of law, I cannot determine by clear and convincing evidence that the respondent has committed an intentional program violation of the FAP program.

Accordingly, this matter is **DISMISSED** without prejudice.

/s/
Corey A. Arendt
Administrative Law Judge
for Maura D. Corrigan, Director
of Human Services

Department

Date Signed: October 26, 2012

Date Mailed: October 26, 2012

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

CAA/las

cc:

