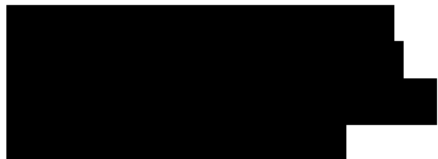


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2012-62155
Issue No: 3055, 1052, 6052
Case No: [REDACTED]
Hearing Date: September 27, 2012
Kent 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 27, 2012, at which Respondent did not appear. This matter having been initiated by the department and due notice having been provided to Respondent, the hearing was held in Respondent's absence in accordance with Bridges Administrative Manual, Item 725.

ISSUES

1. Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Whether Respondent committed an Intentional Program Violation (IPV) of the Family Independence Program (FIP)?
3. Whether Respondent committed an Intentional Program Violation (IPV) of the Child Development and Care (CDC) program?

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 CDC assistance on December 6, 2007. (Department Exhibit M).
3. Respondent completed an application for FAP and FIP assistance on March 16, 2009. (Department Exhibit N).
4. The department contends that the Respondent had a felony warrant out for his arrest as of the time he was receiving FAP and FIP benefits and as such, would not have been eligible for benefits.
5. Because the department alleges that the Respondent had a felony warrant out for his arrest, the department contends that he committed an intentional program violation of the FAP and FIP programs by not informing the department that he had such warrants out for his arrest.
6. The department contends that due to his intentional program violation, the Respondent received an overissuance of FAP benefits in the amount of \$2,724.00 for the period of September 1, 2009 through January 31, 2010 and that the Respondent received an overissuance of FIP benefits in the amount of [REDACTED] for the period of September 1, 2009 through January 31, 2010.
7. The department further contends that during the period that the Respondent was receiving CDC assistance, his children were not residing with him and that, in turn, he did not have a need for CDC assistance.
8. The department contends that because the Respondent did not inform the department that his children were no longer living with him, that he committed an intentional program violation of the CDC program which resulted in an overissuance of CDC benefits in the amount of [REDACTED] for the period of February 17, 2010 through August 2, 2008.
9. Respondent has not previously committed any intentional program violations.
10. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the 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).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The Child Development and Care program is established by Titles IVA, IVE, and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or Department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

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 was not eligible for FIP and FAP benefits during the alleged fraud period as he had a felony warrant out for his arrest and would therefore have been disqualified from receiving FAP and FIP per BEM 203. At the hearing, the department provided no evidence to show that the Respondent did have a felony warrant out for his arrest at the time he was receiving FAP and FIP benefits. The only evidence came in the form of testimony from the [REDACTED] agent who stated that he had spoken to someone from the [REDACTED] about the Respondent having a felony warrant. While hearsay evidence is admissible in an administrative proceeding, the Administrative Law Judge may decide what weight, if any, to give to such evidence. This Administrative Law Judge will not rely solely on hearsay evidence to show that the standard of clear and convincing evidence has been met, particularly in this case when there were other methods available to provide concrete evidence of a warrant being issued. This Administrative Law Judge finds that the department has not presented any evidence that the Respondent had a felony warrant issued for his arrest during the alleged fraud period, and therefore finds that the

department has not met their burden to show by clear and convincing evidence that the Respondent committed an intentional program violation of either the FAP or FIP programs. Additionally, as the department has shown no evidence that the Respondent was disqualified from receiving FAP or FIP benefits, the department has also not shown that the Respondent received an overissuance of FAP and FIP benefits.

Additionally, the department contends that the Respondent committed an intentional program violation of the CDC program by not informing the department that his children were not living with him while receiving CDC benefits. The department has alleged that the fraud period is February 17, 2008 through August 2, 2008. To evidence the assertion that the Respondent's children were not living with him, the department offered case notes from the department worker which state that the mother of the Respondent's children informed the department that she had custody of the children effective June 23, 2009 (see Department Exhibits E & G). This evidence does not cover the alleged fraud period. The OIG testified that a Children's Protective Services (CPS) report indicates as of August 11, 2008 that the Respondent is a non household parent. This report was not furnished during the hearing, nor does the date of this report cover the alleged fraud period. Again, the department has shown no evidence that the Respondent's children were not living with him during the alleged fraud period. This Administrative Law Judge does not find that the department has met their burden to show by clear and convincing evidence that the Respondent committed an intentional program violation of the CDC program. Furthermore, because the department has not shown that the Respondent should have been disqualified from receiving CDC benefits, the department has not shown that the Respondent received an overissuance of CDC benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, does not find that there has been clear and convincing evidence presented to show that the Respondent committed an Intentional Program Violation of the FAP, FIP, or CDC programs.

Accordingly, this matter is hereby **DISMISSED**.

/s/

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

Date Signed: October 11, 2012

Date Mailed: October 11, 2012

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.

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