

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-78413
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: November 14, 2012
Oakland County DHS (02)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 Michigan Admin Code, R 400.3130, on the Department of Human Services' ("Department") request for hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Wednesday, November 14, 2012 before Administrative Law Judge, Michael Bennane. The Respondent failed to appear and the hearing was held in Respondent's absence in accordance with Bridge's Administrative Manual ("BAM") 720 (August 2012), p 10. The Department was represented by [REDACTED], regulation agent with the Office of Inspector General ("OIG"). This matter is now before the undersigned for a written decision.

ISSUE

Whether Respondent committed an intentional program violation ("IPV") involving the Food Assistance Program ("FAP") and whether Respondent received an over-issuance of FAP benefits that the Department is entitled to recoup?

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 Respondent submitted a public assistance application seeking FAP benefits on May 12, 2010.
2. The Respondent was a FAP recipient for the period (in part) of August 2011 through April 2012.
3. For the period at issue, August 2011 through April 2012, the Respondent was not a resident of Michigan.

4. The Respondent completed an application for public assistance, acknowledging his responsibility to report changes in circumstances, to include changes in residency to the Department within ten days of the change.
5. The Respondent failed to notify the Department of his change in residency.
6. The Respondent used his Michigan FAP benefits in Florida for the period of August 2011 through April 2012.
7. As a result, the Respondent received an over-issuance of FAP benefits for the period of August 2011 through April 2012, in the amount of \$1,800.00.
8. The Department sent Respondent written notice of the intentional program violation over-issuance and repayment agreement which the Respondent did not sign.

CONCLUSIONS OF LAW

The Food Assistance Program, formerly known as the Food Stamp 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, formerly known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

In this case, the Department requested a disqualification hearing to establish an over-issuance of benefits as a result of an Intentional Program Violation ("IPV"). The Department requests that the Respondent be disqualified from benefits and seek recoupment of the over-issuance. An over-issuance ("OI") occurs when a client group receives more benefits than they are entitled to receive. BAM 700 A claim is the resulting debt created by the over-issuance of benefits. BAM 700 Recoupment is an action to identify and recover a benefit OI. BAM 700 During the eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities through explanation at application/determination interviews, notices and pamphlets, as well as acknowledgments on the application. BAM 700 Applicants and recipients are required to provide complete and accurate information and to notify the Department of any changes in circumstances that may affect eligibility or benefit amount within 10 days. BAM 105 Incorrect or omitted information causing an OI can result in cash repayment or benefit reduction. BAM 700

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To be eligible for benefits, a person must be a Michigan resident. BEM 220 A person is a resident if s/he:

- is not receiving assistance from another state; **and**
- is living in Michigan, except for a temporary absence, **and**
- intends to remain in the state permanently or indefinitely.

BEM 220

A suspected IPV means an OI exists for which all three of the following conditions exist:

- The customer **intentionally** failed to report **or intentionally** gave incomplete or inaccurate information needed to make a correct benefit determination, **and**
- The customer was clearing and correctly instructed regarding his or her reporting responsibilities, **and**
- The customer has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities. BAM 720

7 CFR 273.16(c) provides in part that an intentional program violation shall consist of having intentionally:

- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

The Code of Federal Regulations further provides criteria for determining an intentional program violation as:

The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section. 7 CFR 273.16(e)(6)

IPV is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM

720 A recipient found to have committed an intentional program violation is disqualified for one year for the first violation. BAM 720

In the record presented, the Department presented evidence that on the May 2010 application, the Respondent resided in Michigan. There was insufficient evidence presented to support a finding through clear and convincing evidence that the Respondent intentionally withheld or misrepresented his residency for the period after the May 2010 application. There was no application or other evidence to establish any affirmative step on the Respondent's part to establish an intentional program violation covering the time period at issue. Thus, although a FAP over-issuance for the period from August 2011 through April 2012 was established, an IPV was not. As such, the Department is entitled to recoup the \$1,800.00 FAP over-issuance for the period from August 2011 through April 2012, without the imposition of the program disqualification.

DECISION AND ORDER

The Department established that the Respondent received an over-issuance of FAP benefits for the period of August 2011 through April 2012.

Accordingly, it is ORDERED:

1. The Department's determination of an Intentional Program Violation is REVERSED.
2. The Department's determination of a FAP over-issuance is AFFIRMED.
3. The Respondent shall be required to reimburse the Department the FAP benefits ineligibly received in the amount of \$1,800.00 for the period from August 2011 through April 2012.
4. The 12 month program disqualification is not imposed.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
Acting Manager
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 19, 2013

Date Mailed: March 19, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/cl

cc:

