

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-13123
Issue No.: 1052, 3052
Case No.: [REDACTED]
Hearing Date: April 18, 2012
Genesee County DHS (02)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, Mich Admin Code, Rules ("MAC R") 400.3130 and 400.3178 upon the Department of Human Services' request for a disqualification on hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Wednesday, April 18, 2012. The Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3178(5). [REDACTED], Regulation Agent of the Office of Inspector General, appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Respondent committed Food Assistance Program ("FAP") Intentional Program Violation ("IPV") for the months of March, April, May, and December 2004?

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 Respondent submitted an application for public assistance seeking cash ("FIP"), food ("FAP"), and medical assistance ("MA"), on January 6, 2004 stating she was not employed. (Exhibit 1, pp. 16 – 23)
2. On March 4, 2004, the Respondent submitted a State Emergency Relief application stating she was not employed. (Exhibit 1, pp. 24 – 26)

3. On June 30, 2004, the Respondent completed a semi-annual review application stating she last worked in April 2004. (Exhibit 1, pp. 29 – 36)
4. On July 6, 2004, the Department received a Verification of Employment for the Respondent confirming employment ended April 30, 2004. (Exhibit 27)
5. Based on the employer's compensation report, the Respondent received gross monthly earnings in the amount of \$934.45 in May 2004 covering 80 hours of work in April. (Exhibit 1, p. 28)
6. Pursuant to the Quarterly Wage Match Report ("wage match"), the Respondent received gross earnings from this employer in the amount of \$6,634.00 for the first quarter of 2004 and \$4,041.00 for the second quarter. (Exhibit 1, pp. 40)
7. Pursuant to a wage match from another employer, the Respondent received \$623.00 in gross earnings for the first quarter of 2004. (Exhibit 1, pp. 40 – 42)
8. In December 2004, the Claimant earned \$1,120.00 bi-weekly. (Exhibit 2, p. 9)
9. The Respondent was a FAP recipient for the months of March, April, May, and December 2004.
10. The Respondent received FIP benefits in the amount of \$401.00 for the month of December 2004.
11. The Respondent's earned income was not originally considered in her FAP budgets for the months at issue (March, April, May, and December 2004).
12. In determining the over-issuance for the period at issue, the Department used the monthly earned income figures of \$2,211.00 for March, \$2,020.00 for April and May, and \$3,360.00 for December 2004. (Exhibit 2, pp. 1- 11)
13. As a result, the Department determined that the Respondent received a FAP over-issuance in the amount of \$1,051.00 for the months of March, April, May, and December 2004. (Exhibit 2, pp. 1 – 11)

14. The Department sent Respondent written notice of the intentional program violation over-issuance and repay agreement which the Respondent did not sign. (Exhibit 1, pp. 7 – 11)
15. This is Respondent's third intentional program violation or wilful withholding of information needed to determine Respondent's eligibility for public assistance.

CONCLUSIONS OF LAW

As a preliminary matter, the OIG seeks a FIP over-issuance in the amount of \$401.00 due to an Intentional Program Violation ("IPV") for the month of December 2004. Pursuant to MAC R 400.3130(5), an IPV hearing will be conducted with or without the individual or authorized representative present, if the hearing notice was not returned by the post office as undeliverable. In this case, the hearing packet was returned by the U.S. Postmaster as undeliverable. Accordingly, the IPV in the amount of \$401.00 under the FIP program will not be adjudicated and the hearing request on this issue is DISMISSED.

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 IPV. The Department requests that the Respondent be disqualified from benefits and seeks 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.

All countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BEM 500. The Department must consider the gross benefit amount before any deduction, unless Department policy states otherwise. BEM 500. If improper reporting or budgeting of income caused the OI, the actual income for the month(s) of the OI is used. BAM 720.

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.

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.

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). (emphasis added)

The Code of Federal Regulations further provides criteria for determining and 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)

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the over-issuance. BAM 700. When a client receives more benefits than s/he is entitled to, the Department must take reasonable steps to promptly correct any overpayment of public assistance benefits, whether due to department or client error. BAMs 705, 720 and 725. 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 a third intentional program violation is disqualified for life. BAM 720.

In the record presented, the Department [Office of Inspector General] established through clear and convincing evidence that the Respondent intentionally withheld, concealed facts, or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits when s/he failed to report income from employment which was necessary to determine her eligibility for public assistance. There is no evidence on the record of any justifiable excuse for the Respondent's failure to report her income.

That being stated, the earned income figures used in determining the FAP over-issuance are understated. For the first quarter of 2004, the Department, based on the wage match report, determined the Respondent's income for March was \$2,211.00 which represents 1/3 of the total earnings from one employer for that quarter. During this same first quarter, the Respondent also received \$623.00 in gross earnings from another employer which was not considered. In addition, for May, the Department used \$2,020.00 which represents 1/2 of the \$4,041.00 gross earnings from May and June 2004. In May 2004, the Respondent also received \$934.45 from another employer from hours worked in April 2004, which was not considered. The April and December FAP OI budgets are accurate. Ultimately, the Department established an IPV; however, the FAP OI amount for the months of March and May are not correct.

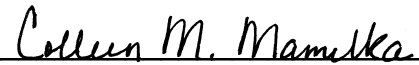
This is the Respondent's third intentional program violation; therefore, the lifetime penalty in effect at the time of said violation is applicable.

DECISION AND ORDER

The Department established through clear and convincing evidence the Respondent committed her third FAP IPV for the months of March, April, May, and December 2004. The Department failed to establish through clear and convincing evidence the amount of the FAP OI for the months of March and May 2004. Accordingly, the Department's determination of a FAP OI of \$1,051.00 for the months of March, April, May, and December 2004 is AFFIRMED in part/REVERSED in part.

Accordingly, it is ORDERED:

1. The Department's determination of FAP IPV for the months of March, April, May, and December 2004 is AFFIRMED.
2. The Respondent is personally ineligible to participate in the FAP program for life.
3. The disqualification period shall be applied immediately.
4. The Department's determination of a \$1,051.00 FAP over-issuance is REVERSED.
5. The Department shall recalculate the FAP OI for the months of March and May 2004 using all earned income figures as detailed above in accordance with Department policy.
6. The Department shall notify the Respondent at the last known address of the revised FAP OI for the months of March, April, May, and December 2004, in accordance with Department policy.



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

Date Signed: April 23, 2012

Date Mailed: April 23, 2012

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

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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:

