

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

IN THE MATTER OF:



Reg No.: 2012-28385
Issue No.: 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.

ISSUE

Whether the Respondent committed Food Assistance Program ("FAP") Intentional Program Violation ("IPV") for the period from November 2010 through May 2011?

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 a public assistance application seeking FAP benefits on July 1, 2010. (Exhibit 1, pp. 6 – 13)
2. The Respondent was a FAP recipient for the period at issue, November 2010 through May 2011.
3. For the period at issue, the Respondent was a resident of Florida. (Exhibit 1, pp. 16 – 19)

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. (Exhibit 1, p. 13)
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 from November 2010 through May 2011. (Exhibit 1, pp. 14, 15)
7. As a result, the Respondent received an over-issuance of FAP benefits for the period from November 2010 through May 2011 in the amount of \$1,400.00. (Exhibit 1, p. 20, 21)
8. The Department sent Respondent written notice of the intentional program violation over-issuance and repayment agreement which the Respondent did not sign.
9. This is Respondent's first intentional program violation or wilful withholding of information needed to determine Respondent's eligibility for public assistance.

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

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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.

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.

An 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 established through clear and convincing evidence that the Respondent lived in Florida during the period at issue, November 2010 through May 2011, and continued to use his Michigan FAP benefits. There is no evidence on the record of any justifiable excuse for the Respondent's failure to report his change in residency. The Department is entitled to recoup the \$1,400.00 FAP over-issuance for the period from November 2010 through May 2011. This is the Respondent's first intentional program violation, therefore, the 12-month 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 his first FAP IPV for the period from November 2010 through May 2011.

Accordingly, it is ORDERED:

1. The Respondent is personally ineligible to participate in the FAP program for 12 months.
2. The disqualification period shall be applied immediately.
3. The Respondent shall be required to reimburse the Department the FAP benefits ineligibly received in the amount of \$1,400.00 for the period from November 2010 through May 2011.

Colleen M. Mamelka

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

Date Signed: April 19, 2012

Date Mailed: April 19, 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 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.

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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
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/cl

cc:

