

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-48082
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: June 21, 2012
County: Cheboygan

Administrative Law Judge: Vicki L. Armstrong

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 Mich Admin Code, Rule 400.3130, on the Department of Human Services' (the Department's) request for hearing. After due notice, a hearing was held on June 21, 2012, at which Respondent failed to appear. The hearing was held in Respondent's absence in accordance with Bridges Administrative Manual (BAM) 720, pp 9-10. The Department was represented by an agent of its Office of Inspector General (OIG).

ISSUE

In dispute was whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP), thereby receiving an overissuance of benefits.

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 Department's OIG filed a request for hearing to establish an overissuance of FAP benefits received as a result of a determination that Respondent committed an IPV. The agency further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year. (Department's Exhibits 2-3; OIG representative's hearing testimony, June 21, 2012).
2. Respondent signed an assistance application (DHS-1171) on January 13, 2011. Respondent included on this application his permanent mailing address as [REDACTED]. (Department's Exhibits 13-32).

3. By signing this application, Respondent acknowledged that he understood his failure to give timely, truthful, complete, and accurate information about his circumstances could result in a civil or criminal action, or an administrative claim, against him. (Department's Exhibits 13-32; OIG representative's hearing testimony).
4. Between May 1, 2011, and November 30, 2011, Respondent received FAP benefits from the State of Michigan totaling [REDACTED]. (Department's Exhibits 1-2; OIG representative's hearing testimony).
5. During the period May 1, 2011, and November 30, 2011, Respondent was living in Virginia and used his Michigan FAP benefits solely in Virginia. (Department's Exhibits 2, 7; OIG representative's hearing testimony).
6. Because Respondent failed to inform the Department that he had moved to Virginia, while receiving FAP benefits from Michigan, he thus received an overissuance of FAP benefits totaling [REDACTED]. (Department's exhibits 2, 7, 37; OIG representative's hearing testimony).
7. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to timely report all changes in circumstances to the Department, including his move out of state to [REDACTED]. (Department's Exhibit 1; OIG representative's hearing testimony.)
8. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with her reporting responsibilities.

CONCLUSIONS OF LAW

The hearing and appeals process for applicants and recipients of public assistance in Michigan is governed by the Mich Admin Code, Rules 400.901 through 400.951, in accordance with federal law. An opportunity for hearing must be granted to an applicant who requests a hearing because his claim for assistance is denied or not acted on with reasonable promptness, and to any recipient who is aggrieved by Department action resulting in suspension, reduction, discontinuance, or termination of assistance. Rule 400.903(1). An applicant or recipient holds the right to contest an agency decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department must provide an administrative hearing to review the decision and determine its appropriateness. Bridges Administrative Manual (BAM) 600, p 1.

The FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in 7 CFR 273.1 *et seq.* The Department administers the FAP under MCL 400.10, *et seq.*, and the Mich Admin Code, Rules 400.3001 through 400.3015. Agency policies pertaining to the FAP are found in the BAM, Bridges

Eligibility Manual (BEM), and Reference Tables Manual (RFT). The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230A.

In the present matter, the Department requested a hearing to establish an overissuance of FAP benefits, claiming that the overissuance was a result of an IPV committed by Respondent. Further, because this was Respondent's first-determined infraction, the agency asked that he be disqualified from participation in the FAP for one year. (Department's Exhibits 2-3).

It is well settled that a person cannot receive FAP in Michigan unless they are a resident of Michigan. BEM 220, p 1. Moreover, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level within ten days of the change. BAM 105, p 7.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Here, the OIG provided credible testimony and other evidence demonstrating that Respondent, during the period May 1, 2011, through November 30, 2011, was residing in the State of Virginia and Respondent used those FAP benefits solely in Virginia.

When a client or group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1. A suspected IPV is defined as 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. [BAM 720, p 1. (Emphasis added.)]

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.

An overissuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the overissuance was referred to an agency recoupment specialist, whichever is later. This period ends on the month before the benefit is corrected. BAM 720, p 6. The amount of overissuance is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 720, p 6.

Suspected IPV matters are investigated by the OIG. This office:

- Refers suspected IPV cases that meet criteria for prosecution to the appropriate prosecuting attorney.
- Refers suspected IPV cases that meet criteria for IPV administrative hearings to the Michigan Administrative Hearings System (MAHS).
- Returns non-IPV cases back to the Department's recoupment specialist.

BAM 720, p 9.

The OIG will request an IPV hearing when:

- Benefit overissuances are not forwarded to the prosecuting attorney's office.
- Prosecution of the matter is declined by the prosecuting attorney's office for a reason other than lack of evidence, and
 - The total combined overissuance amount for the FAP is \$1000 or more, or
 - The total overissuance amount is less than \$1000, and
 - The group has a previous IPV, or
 - The alleged IPV involves FAP trafficking, or
 - The alleged fraud involves concurrent receipt of assistance or
 - The alleged fraud is committed by a state/government employee.

BAM 720, p 10.

The OIG represents the Department during the hearing process in IPV matters. BAM 720, p 9.

When a client is determined to have committed an IPV, the following standard periods of disqualification from the program are applied (unless a court orders a different length of time):

- One year for the first IPV.
- Two years for the second IPV.
- Lifetime for the third IPV.

BAM 720, p 13.

Further, IPV's involving the FAP result in a ten-year disqualification for concurrent receipt of benefits (i.e., receipt of benefits in more than one State at the same time). BAM 720, p 13; see also BEM 203, p 1.

Respondent's signature on the Assistance Application from January 13, 2011, certifies that he was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that Respondent committed a first intentional violation of the FAP program, resulting in a [REDACTED] overissuance from May 2011 through November, 2011. Consequently, the department's request for FAP program disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Respondent committed an Intentional Program Violation by failing to report that he moved and was living in Virginia while receiving FAP benefits for the period of time from May 2011 through November, 2011.

Therefore, it is ordered that:

1. Respondent shall be personally disqualified from participation in the FAP program for one year, but the rest of the household may participate. This disqualification period shall begin to run immediately as of the date of this order.
2. The department is entitled to recoup the overissuance of benefits Respondent ineligibly received. Respondent is ORDERED to reimburse the department for the [REDACTED] FAP overissuance caused by his intentional program violation.

It is SO ORDERED.

/s/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 6/26/12

Date Mailed: 6/26/12

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

VLA/ds

