

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

IN THE MATTER OF:



Reg. No: 201256573
Issue No: 3055
Case No: [REDACTED]
Hearing Date: August 15, 2012
Jackson 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 August 15, 2012, at which Respondent appeared and provided testimony.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?

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 public assistance on August 9, 2011 (DHS 1171), acknowledging her responsibility to report any changes in his income, resources, or living arrangements to the department within ten days of the change. (Department Exhibits 9-27).
3. From August 16, 2011 through March 6, 2012, the Respondent used her EBT card and, in turn, her FAP benefits exclusively in the state of Indiana. (Department Exhibits 31-33).
4. The department was not aware that the Respondent was no longer a resident of the state of Michigan.

5. Because the Respondent did not inform the department that she was no longer a resident of the state of Michigan, the department contends that the claimant committed an intentional program violation of the FAP program and as such received an overissuance of FAP benefits in the amount of \$ [REDACTED] for the period of August 1, 2011 through April 30, 2012. (Department Exhibits 28-29).
7. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
8. Respondent was clearly instructed and fully aware of the responsibility to report true and accurate information to the department.
9. Respondent has not previously committed any intentional program violations.

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).

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 committed an intentional program violation of the FAP program by not informing the department that she was no longer a resident of the state of Michigan. At the hearing, the Respondent did not refute that she had moved from the state of Michigan or that she used her EBT card and therefore her FAP benefits exclusively in the state of Indiana. The Respondent asserted that she did not know that she was required to inform the department that she was no longer living in the state of Michigan or that she would not have been eligible for benefits from the state of Michigan if she was not a resident. The Respondent also

testified that she did not read the DHS 1171 assistance application or the accompanying materials relating to her obligations and that she did in fact move to Indiana during the time period in question. This Administrative Law Judge is not swayed by the Respondent's assertion that she did not read the materials in question before signing her name in turn acknowledging her receipt of such. Additionally, the claimant testified that she attempted to contact the department to cancel her benefits. This statement contradicts the claimant's testimony that she was unaware that she would be no longer eligible for benefits if she was no longer a resident of the state of Michigan. Allowing an individual to escape their acknowledged obligations because they state that they did not read the materials they were signing is contrary to well established Michigan Law. In *Komraus Plumbing & Heating, Inc. vs. Cadillac Sand Motel, Inc.* 387 Mich. 285 (1972) the court stated,

This court has many times held that one who signs a contract will not be heard to say, when enforcement is sought, that he did not read it, or that he supposed it was different in its terms. *Gardner v. Johnson*, 236 Mich. 258 (210 N.W. 295); *Draegr v. Kent County Savings Ass'n*, 242 Mich. 486 (219 N.W. 637); *Powers v. Indiana & M. Elec. Co.*, 252 Mich. 585 (233 N.W. 424). But the general rule announced in those cases is not applicable when the neglect to read is not due to carelessness alone, but was induced by some strategem, trick, or artifice on the part of the one seeking to enforce the contract. *Id.* at 290.

Therefore, this Administrative Law Judge determines that the Respondent did commit an intentional program violation of the FAP program by not informing the department that she had moved from the state of Michigan to the state of Indiana.

The department asserts that the claimant receiving concurrent benefits in the state of Indiana and offers Department Exhibit 8 as proof. However, this document provides no information that would allow one to conclude that there has been concurrent receipt of benefits. The OIG agent testified that the signature affixed to the document is that of a state worker from the state of Indiana, but there is nothing on the document to identify the individual as such. Furthermore, the hand written statement "food closing 3/31/2012" does not specifically identify if the Respondent received food assistance in the state of Indiana, when said assistance was commenced, or for how long said assistance was received. Accordingly, the Administrative Law Judge does not find that the department has presented clear and convincing evidence to show that the Respondent received concurrent FAP benefits in the state of Indiana.

In conclusion, the Administrative Law Judge finds by clear and convincing evidence that the claimant has committed an intentional program violation of the FAP program which resulted in an overissuance in the amount of \$ [REDACTED] for the period of August 1, 2011 through April 30, 2012. Because this is the Respondent's first intentional program violation, the one year disqualification period is appropriate. This Administrative Law Judge does not find the ten year disqualification period to be appropriate as the department has not shown by clear and convincing evidence that the Respondent received concurrent benefits with the state of Indiana.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds clear and convincing evidence that the Respondent committed an Intentional Program Violation by failing to notify the department that she was no longer a resident of the state of Michigan.

Therefore, it is HEREBY ORDERED that:

1. The Respondent shall reimburse the department for FAP benefits ineligibly received as a result of her intentional program violation in the amount of \$ [REDACTED]
2. The Respondent is personally ineligible to participate in the FAP program for the period of one year. The disqualification period shall be applied immediately.

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

Date Signed: September 7, 2012

Date Mailed: September 7, 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.

CSScr

cc:

[REDACTED]