

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

IN THE MATTER OF:



Reg. No: 201262184
Issue No: 3055, 4052
Case No: [REDACTED]
Hearing Date: September 27, 2012
Kent 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 September 27, 2012, at which Respondent did not appear. This matter having been initiated by the department and due notice having been provided to Respondent, the hearing was held in Respondent's absence in accordance with Bridges Administrative Manual, Item 725.

ISSUES

1. Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?
2. Whether the Respondent committed an intentional program violation of the State Disability Assistance (SDA) program?

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 October 13, 2009 (DHS 1171), acknowledging his responsibility to report any changes in his income, resources, or living arrangement to the department within ten days of the change. (Department Exhibits 6-21).

3. On December 5, 2010, a redetermination was submitted on behalf of the claimant by his authorized representative (AR). (Department Exhibits 26-41).
4. Beginning April 20, 2010, the Respondent was employed at Amway. (Department Exhibits 22-25).
5. The Respondent's AR contacted the department October 26, 2010 and reported that the Respondent was employed.
6. Because the Respondent did not inform the department of his employment and income from said employment, the department contends that the Respondent committed an intentional program violation of the FAP program which resulted in the Respondent receiving an overissuance of FAP benefits in the amount of [REDACTED] from the period of June 1, 2010 through October 31, 2010 and that the Respondent committed an intentional program violation of the SDA program which resulted in the Respondent receiving an overissuance of SDA benefits in the amount of [REDACTED] for the time period of June 1, 2010 through October 31, 2010.
7. Respondent was clearly instructed and fully aware of the responsibility to report true and accurate information to the department.
8. Respondent had not committed any previous intentional program violations.

CONCLUSIONS OF LAW

As a preliminary matter, the notice of hearing which was sent to the Respondent was returned as undeliverable. In accordance with policy, the hearing may then proceed on the issue of the alleged FAP intentional program violation, however the issue of the alleged SDA intentional program violation must be dismissed. Accordingly, the Administrative Law Judge will dismiss the portion of this hearing pertaining to the alleged SDA intentional program violation without prejudice.

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 by not reporting his income to the department in a timely fashion. The claimant currently has an AR who is also listed as a protective payee (see Department Exhibit 27). This Administrative Law Judge finds points of concern pertaining to the Respondent's AR. There is not sufficient evidence to establish at what point in time the AR/protective payee became necessary or why the AR/protective payee became necessary. Therefore, the Administrative Law Judge does not find that there is clear and convincing evidence to show that the Respondent was suffering from a physical or mental defect or impairment that would have affected his ability to understand his reporting obligations or to report. Accordingly, the Administrative Law Judge does not find that there has been clear and convincing evidence presented to establish an intentional program violation of the FAP program.

However, as the Respondent did not report income timely to the department and based on the inclusion of that income, would have been eligible for fewer benefits than what were received. Therefore, the Respondent received an overissuance of FAP benefits in the amount of \$ [REDACTED] for the time period of June 1, 2010 through October 31, 2010. Based on policy, the department is required to recoup that overissuance even if the overissuance results from client error and not an intentional program violation. BAM 700. Therefore, the department is required to recoup the overissuance in this matter.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, does not find clear and convincing evidence that the Respondent committed an intentional program violation of the FAP program. The department's claim to establish an IPV is **HEREBY DISMISSED**.

Additionally, as the notice of hearing was returned as undeliverable, the department's claim to establish an IPV for the SDA program is **HEREBY DISMISSED WITHOUT PREJUDICE**.

However, the Administrative Law Judge does find that the Respondent was overissued FAP benefits, and there is a current balance due and owing to the department in the amount of \$ [REDACTED]. Therefore, the Respondent received an overissuance of FAP benefits as a result of client error in the amount of \$ [REDACTED].

Accordingly, the Administrative Law Judge ORDERS that the Respondent shall reimburse the department for FAP benefits ineligibly received, and the department shall initiate collection procedures in accordance with department policy.

/s/_____

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

Date Signed: October 11, 2012

Date Mailed: October 12, 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.

CSS/cr

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