

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201319852
Issue No: 3055
Case No: [REDACTED]
Hearing Date: May 16, 2013
Monroe County DHS

Administrative Law Judge: Suzanne D. Sonneborn

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, R 400.3130, on the Department of Human Services' (the Department's) request for hearing. After due notice, a telephone hearing was held on May 16, 2013, at which Respondent appeared and provided testimony. Respondent's mother, [REDACTED], and Respondent's sister, [REDACTED], also appeared and provided testimony on Respondent's behalf. The Department was represented by [REDACTED], a regulation agent with the department's Office of Inspector General (OIG).

ISSUE

Whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP) and whether Respondent received an over-issuance of FAP benefits that the Department is entitled to recoup?

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 over issuance 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.
2. On December 12, 2011, Respondent signed an assistance application (DHS-1171) and reported therein that he resided at [REDACTED], Michigan and that his household included his minor son, [REDACTED]. In signing the application, Respondent certified with his signature, under penalty of perjury, that the application had been

examined by or read to him and, to the best of his knowledge, the facts were true and complete. Respondent further certified with his signature that he received a copy, reviewed, and agreed with the sections in the assistance application Information Booklet, which include the obligation to report changes in one's circumstances within ten days. Respondent further certified with his signature that he understood he could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if he intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause him to receive assistance he should not have received. (Department Exhibit 1, pp. 6-23; Department Exhibit 2, pp. 24-48)

3. During the period from December 1, 2011 through March 31, 2012, Respondent and Respondent's son resided with Respondent's sister, [REDACTED] at her home at [REDACTED], Michigan. ([REDACTED] Hearing Testimony; [REDACTED] Hearing Testimony)
4. On September 6, 2012, the Department obtained verification that Respondent no longer resided at [REDACTED], Michigan. (Department Exhibit 3, pp. 49-50)
5. Respondent's son returned to Mississippi at the end of March 2012 and, in May 2012, he returned to live with Respondent at [REDACTED], Michigan until August 2012, when he again returned to Mississippi. ([REDACTED] Hearing Testimony)
6. Respondent failed to timely and accurately report to the Department his change of address from [REDACTED], Michigan to [REDACTED], Michigan.
7. Respondent failed to timely and accurately report to the Department when his son returned to Mississippi during the months of April 2012 and September 2012.
8. On September 7, 2012, the Department obtained verification that Respondent's son received food assistance benefits from the state of Mississippi during the periods September 8, 2011 through February 29, 2012 and March 14, 2012 through September 7, 2012. (Department Exhibit 4, pp. 51-53)
9. As a result of Respondent's failure to timely and accurately report to the Department when his son was no longer in his FAP group, he received an over issuance of FAP benefits in the amount of \$240.00 for the months of April 2012 and September 2012. (Department Exhibit 5, pp. 54-68)

10. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to report all changes in circumstances, including any changes to his FAP group's composition, to the Department within ten days of the occurrence, as required by agency policy.
11. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with his reporting responsibilities.

CONCLUSIONS OF LAW

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 Mich Admin Code, R 400.3001 through R 400.3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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, the Department asked that Respondent be disqualified from the FAP for a period of one year.

In general, persons who live together and purchase and prepare food together are members of the same FAP eligibility determination group. BEM 212, p 5. A client is responsible for reporting any change in circumstances that may affect eligibility or benefit level, including changes in group composition with respect to members who purchase and prepare food together, within ten days of the change. BAM 105, p 7.

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.]

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); and 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 OI amount for the FAP is \$1000 or more, or
- The total OI 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; and 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.

A disqualified client remains a member of an active benefit group, as long as he or she continues to live with the other group members – those members may continue to receive benefits. BAM 720, p 12.

In this case, at the May 16, 2013 disqualification hearing, the OIG provided credible and sufficient testimony and other evidence establishing that on December 12, 2011, Respondent signed an assistance application (DHS-1171) and reported therein that he resided at [REDACTED], Michigan and that his household included his minor son, [REDACTED]. In signing the application, Respondent certified with his signature, under penalty of perjury, that the application had been examined by or read to him and, to the best of his knowledge, the facts were true and complete. Respondent further certified with his signature that he received a copy, reviewed, and agreed with the sections in the assistance application Information Booklet, which include the obligation to report changes in one's circumstances within ten days. Respondent further certified with his signature that he understood he could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if he intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause him to receive assistance he should not have received.

The OIG further established that as of September 6, 2012, Respondent no longer resided at [REDACTED], Michigan, which change of address Respondent failed to timely and accurately report to the Department. The OIG further established that Respondent's son received food assistance benefits from the state of Mississippi during the periods September 8, 2011 through February 29, 2012 and March 14, 2012 through September 7, 2012. The OIG further established that Respondent received an over issuance of FAP benefits in the amount of \$240.00 for the months of April 2012 and September 2012

Also at the May 16, 2013 hearing, Respondent and Respondent's sister, [REDACTED], credibly testified that, during the period December 1, 2011 through March 31, 2012, Respondent and Respondent's son resided with Ms. [REDACTED] at her home at [REDACTED], Michigan. Respondent further testified that his son returned to Mississippi at the end of March 2012 and, in May 2012, he returned to live with Respondent at [REDACTED], Michigan until August 2012, when he again returned to Mississippi. Respondent further testified that he unsuccessfully sought his son's mother's verification that their son was living with Respondent during the time period in question; however, she refused to assist Respondent as it would jeopardize her own food assistance case in Mississippi. Respondent further acknowledged that he did not timely report his change of residence or the months when his son returned to Mississippi and was not living with him (April 2012 and September 2012) but Respondent indicated that this reporting failure was not intentional and he had no intention of defrauding the state of Michigan.

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).

Consequently, based on the testimony and evidence presented by both the OIG and Respondent, this Administrative Law Judge finds that while Respondent did indeed fail to timely and properly report accurate information regarding his change of address and, more importantly, the change in his FAP group composition, and that Respondent received an over issuance of FAP benefits in the amount of \$240.00 for the months of April 2012 and September 2012, which the Department is entitled to recoup, the OIG has not established, under the clear and convincing standard, that Respondent's failure to timely and properly report accurate information was *intentional*. Therefore, it cannot be said that Respondent committed an intentional program violation with respect to the FAP program.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that, while Respondent did indeed receive an over issuance of FAP benefits in the amount of \$240.00 for the months of April 2012 and September 2012, which the Department is entitled to recoup, Respondent did not commit an intentional program violation with respect to the FAP program.

It is therefore **ORDERED** that the department's determination of an intentional program violation with respect to the FAP program is **REVERSED**. It is further **ORDERED** that the department's recoupment of overissued FAP benefits in the amount of \$240.00 is **UPHELD**.

/s/ _____
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 17, 2013

Date Mailed: May 20, 2013

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 Hearing Decision. 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.

Either party may appeal this Hearing Decision 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.

Respondent 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 errors, or other obvious errors in the hearing decision that effect the substantial rights of 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 System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/aca

cc:

