

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201322231
Issue No: 3055
Case No: [REDACTED]
Hearing Date: April 25, 2013
County: Saginaw

Administrative Law Judge: Suzanne D. Sonneborn

AMENDED HEARING DECISION AND ORDER

On May 1, 2013, a Hearing Decision and Order was issued with errors in the Hearing Decision and Order. The Hearing Decision and Order is amended as follows:

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 hearing was held on April 25, 2013, at which Respondent failed to appear. The hearing was held in Respondent's absence in accordance with Department of Human Services Bridges Administrative Manual (BAM) 720, pp 9-10. 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 the State Emergency Relief (SER) program and whether Respondent received an over issuance of FAP and SER 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 and SER 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 February 24, 2011, Respondent signed an assistance application (DHS-1171) and, reported therein that she was unemployed. In signing the application, Respondent certified with her signature, under penalty of perjury, that the application had been examined by or read to her and, to the best of her knowledge, the facts were true and complete. Respondent further certified with her signature that she 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 her signature that she understood she could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if she intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause her to receive assistance she should not have received. (Department Exhibit 1, pp. 15-34; see also Department Exhibit 13, pp. 99-102)
3. On May 4, 2011, Claimant reported to the department that she would begin employment with [REDACTED] on May 9, 2011, earning \$11.73 per hour and working 25 to 30 hours per week. (Department Exhibit 2, p. 35; see also Department Exhibit 3, pp. 36-37)
4. On June 16, 2011, Respondent completed an assistance application for State Emergency Relief assistance (DHS-1514) and, in doing so, failed to report her earnings from her employment with [REDACTED]. In signing the application, Respondent certified with her signature, under penalty of perjury, that the application had been examined by or read to her and, to the best of her knowledge, the facts were true and complete. (Department Exhibit 4, pp. 38-40)
5. On September 13, 2011, December 4, 2011, and January 26, 2012, respectively, Claimant completed three assistance applications for SER assistance (DHS-1514) and, in doing so, failed to accurately report her earnings from her employment with [REDACTED]. In signing the applications, Respondent certified with her signature, under penalty of perjury, that the application had been examined by or read to her and, to the best of her knowledge, the facts were true and complete. (Department Exhibit 6, pp. 47-49; Department Exhibit 7, pp. 50-52; Department Exhibit 8, pp. 53-57)
6. On March 22, 2012, Claimant returned a partially completed Wage Match Client Notice (DHS-4638) to the department along with copies of her pay stubs from July 22, 2011 through March 16, 2012, which pay stubs revealed that Claimant received commission pay in addition to her wages. (Department Exhibit 9, pp. 58-74)

7. On July 19, 2012, the department obtained verification that Respondent's gross earnings from her employment with [REDACTED] since May 9, 2011 was in excess of that which she reported to the department. (Department Exhibit 10, pp. 75-77)
8. As a result of Respondent's refusal or failure to properly report earned income from her employment earnings [REDACTED], she received an over issuance of FAP benefits in the amount of \$2,018.00 for the period July 1, 2011 through March 31, 2012. (Department Exhibit 11, pp. 78-79; Department Exhibit 12, pp. 80-98)
9. Respondent was clearly instructed and fully aware, or should have been fully aware, of her responsibility to report all changes in circumstances, including her receipt of earned income, to the Department within ten days of the occurrence, as required by agency policy.
10. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with her reporting responsibilities.
11. This was the first determined FAP IPV committed by Respondent.

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).

The State Emergency Relief (SER) program was established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department policies are found in the State Emergency Relief Manual (ERM).

In the present matter, the Department requested a hearing to establish an overissuance of FAP and SER benefits, claiming that the overissuance was the result of an IPV committed by Respondent. Further, the Department asked that Respondent be disqualified from the FAP program for a period of one year.

Generally, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level, including a change in income amount, within ten days of the change. BAM 105, p 7. With respect to earned income, a client must report any of the following: starting or stopping employment; changing employers; change in rate of

pay; and a change in work hours of more than five hours per week that is expected to continue for more than one month. BAM 105, p. 7. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments.

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.

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).

In this case, at the April 25, 2013 disqualification hearing, the OIG provided credible, sufficient, and undisputed testimony and other evidence establishing that, on February 24, 2011, Respondent signed an assistance application (DHS-1171) and, reported therein, that she was unemployed. In signing the application, Respondent certified with her signature, under penalty of perjury, that the application had been examined by or read to her and, to the best of her knowledge, the facts were true and complete. Respondent further certified with her signature that she 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 her signature that she understood she could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if she intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause her to receive assistance she should not have received. The OIG further established that, while Respondent reported to the department on May 4, 2011 that she would begin employment with [REDACTED] on May 9, 2011, earning \$11.73 per hour and working 25 to 30 hours per week, Respondent failed to timely and accurately report to the department until March 2012 that, beginning in July 2011, she was also being paid commission pay by [REDACTED], which pay was well in excess of her earnings.

The OIG further established that, as result of Respondent's refusal or failure to properly report earned income from her employment earnings at [REDACTED], she received an over issuance of FAP benefits in the amount of \$2,018.00 for the period July 1, 2011 through March 31, 2012.

Finally, while the OIG established that Respondent completed SER assistance applications on September 13, 2011, December 4, 2011, and January 26, 2012 and failed to accurately report therein her earnings and commission pay from her employment with [REDACTED], the OIG failed to produce any evidence, including, but not limited to, an over issuance budget, establishing what, if any, over issuance of SER benefits was paid to Respondent as a result of her reporting failure.

Consequently, based on the credible and undisputed testimony and other evidence presented by the OIG, the Administrative Law Judge finds that the OIG failed to establish, under the clear and convincing standard, that Respondent committed an IPV involving the SER program. The Administrative Law Judge further finds that the OIG established, under the clear and convincing standard, that Respondent committed an IPV involving the FAP program, resulting in an over issuance of FAP benefits in the amount of \$2,018.00 for the period July 1, 2011 through March 31, 2012. Further, because this was Respondent's first IPV, the one-year disqualification period from the FAP program is appropriate.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that Respondent did not commit an IPV involving the SER program and the department is therefore **REVERSED** in this regard. This Administrative Law Judge further decides that Respondent committed an intentional program violation involving the FAP program by refusing or failing to report her earned income.

It is therefore **ORDERED THAT:**

- Respondent shall reimburse the Department for the FAP benefits ineligibly received as a result of her intentional program violation in the amount of \$2,018.00; and
- Respondent is personally disqualified from participation in the FAP for a period of one year. The disqualification period will begin to run IMMEDIATELY as of the date of this order.

/s/

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

Date Signed: May 1, 2013

Date Mailed: May 2, 2013

NOTICE: Either party may appeal this decision and order to the circuit court for the county in which the party resides within 30 days of receipt of this decision and order.

SDS/aca

cc:

