

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201326252
Issue No: 3055
Case No: [REDACTED]
Hearing Date: March 28, 2013
Calhoun 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 hearing was held on March 28, 2013, at which Respondent appeared and provided testimony. The Department was represented by [REDACTED], a regulation agent with the department's Office of Inspector General (OIG), as well as [REDACTED] and [REDACTED], both of whom are eligibility specialists with the department's Calhoun County office.

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 November 21, 2008 and October 11, 2010, Respondent signed two assistance applications (DHS-1171), respectively, and in doing so, 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. 8-23; Department Exhibit 2, pp. 24-39; Department Exhibit 7, p. 66)

3. On October 4, 2011, Respondent completed and signed a redetermination (DHS-1010), wherein Respondent reported that he began receiving Social Security income in April 2011 in an undisclosed amount. Respondent certified with his signature, under penalty of perjury, that the redetermination 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 and reviewed the sections in DHS Publication 1010, Important Things About Programs & Services. Respondent further certified with his signature that all the information he has written on the form or told his DHS specialist was true. 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 3, pp. 40-43)
4. On February 8, 2012, the Department obtained verification that Respondent began receiving monthly RSDI income in January 2011 in the amount of \$ [REDACTED] (Department Exhibit 4, pp. 44-46)
5. Respondent failed to timely and accurately report to the Department his monthly receipt of RSDI income in the amount of \$ [REDACTED]
6. As a result of Respondent's failure to timely and accurately report his monthly receipt of RSDI income, he received an over issuance of FAP benefits in the amount of \$ [REDACTED] for the period March 1, 2011 through October 31, 2011. (Department Exhibit 5, pp. 47-48; Department Exhibit 6, pp. 49-65)
7. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to report all changes in circumstances, including his receipt of unearned income, to the Department within ten days of the occurrence, as required by agency policy.

8. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with his reporting responsibilities.
9. 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).

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.

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. 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 March 28, 2013 disqualification hearing, the OIG provided credible, and sufficient testimony and other evidence establishing that, on November 21, 2008 and October 11, 2010, Respondent signed two assistance applications (DHS-1171), respectively, and in doing so, 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, on October 4, 2011, Respondent completed and signed a redetermination (DHS-1010), wherein Respondent reported that he began receiving Social Security income in April 2011 in an undisclosed amount. Respondent certified with his signature, under penalty of perjury, that the redetermination 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 and reviewed the sections in DHS Publication 1010, Important Things About Programs & Services. Respondent further certified with his signature that all the information he has written on the form or told his DHS specialist was true. 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 Respondent began receiving monthly RSDI income in January 2011 in the amount of \$ [REDACTED] – and that Respondent failed to timely and accurately report this unearned income to the department. Finally, the OIG established that, as a result of Respondent's failure to timely and accurately report his monthly receipt of RSDI income, he received an over issuance of FAP benefits in the amount of \$ [REDACTED] for the period March 1, 2011 through October 31, 2011.

In response to the OIG's presentation, Respondent testified that he first reported to his case specialist, Destiny Goss, in May 2011 that he began receiving RSDI benefits in April 2011. However, Ms. Goss testified that she had no record or recollection of Respondent having reporting this income in May 2011. Ms. Goss further testified that, had Respondent done so, she would have redetermined Respondent's FAP budget accordingly at that time.

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).

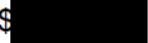
This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds unpersuasive Respondent's testimony that he reported his RSDI income to his case specialist in May 2011, particularly given that Respondent continued to receive the same amount of FAP benefits thereafter, which benefit amount he knew was based on his monthly income amount. Moreover, Respondent's signature on his assistance applications and his redetermination established that he was, or should have been, fully aware that the intentional withholding or misrepresentation of information potentially affecting his eligibility or benefit level could result in criminal, civil, or administrative action. Finally, there was no evidence presented indicating that Respondent suffered from any physical or mental impairment that limited his ability to understand and fulfill his reporting responsibilities. See BEM 720, p 1.

Based on the credible and sufficient testimony and other evidence presented by the OIG, the Administrative Law Judge finds that the OIG established, under the clear and convincing standard, that Respondent committed an IPV in this matter, resulting in an over issuance of FAP benefits in the amount of \$ [REDACTED] for the period March 1, 2011 through October 31, 2011. Further, because this was Respondent's first IPV, the one-year disqualification period is appropriate.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that Respondent committed an intentional FAP program violation.

It is therefore ORDERED THAT:

- Respondent shall reimburse the Department for the FAP benefits ineligibly received as a result of his intentional program violation in the amount of \$ 
- Respondent is personally disqualified from participation in the FAP for 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: March 28, 2013

Date Mailed: March 29, 2013

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

SDS/cr

cc:

