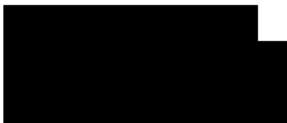


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201328034
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: May 8, 2013
County: Ingham

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

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 hearing. After due notice, a telephone hearing was held on May 8, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3187(5).

ISSUES

- i. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
- ii. Did Respondent commit an Intentional Program Violation (IPV)?
- iii. Should Respondent be disqualified from receiving Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on December 27, 2012 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of FAP benefits during the period of July 1, 2009 through January 31, 2010.
4. Respondent was aware of the responsibility to timely report to the Department when her group's actual gross monthly income exceeded the simplified reporting income limit.
5. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is July 1, 2009 through January 31, 2010.
7. During the alleged fraud period, Respondent was issued \$1,104.00 in FAP benefits from the State of Michigan.
8. Respondent was entitled to \$0.00 in FAP during this time period.
9. Respondent did receive an OI of FAP benefits in the amount of \$1,104.00.
10. The Department has established that Respondent committed an IPV.
11. This was Respondent's first IPV.
12. A notice of disqualification hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

BAM 700 and BAM 720 govern Intentional Program Violations (IPVs). Generally speaking, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance (OI). BAM 700. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 720.

According to BAM 720, a "suspected IPV" means an OI exists for which the following three conditions exist:

- 1) The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, **and**
- 2) The client was clearly and correctly instructed regarding his or her reporting responsibilities, **and**
- 3) The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

An IPV is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720.

The Department's OIG requests IPV hearings for cases when:

- FAP trafficking OIs 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 IPV, **or**
 - The alleged IPV involves FAP trafficking, **or**
 - The alleged fraud involves concurrent receipt of assistance (See BEM 222), **or**
 - The alleged fraud is committed by a state/government employee. BAM 720.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720. Clients are disqualified for periods of 1 (one) year for the first IPV, 2 (two) years for the second IPV, a lifetime disqualification for the third IPV, and 10 (ten) years for a concurrent receipt of benefits. BAM 720. If the court does not address disqualification in its order, the standard period applies. BAM 720.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105. Clients are required to report changes within 10 (ten) days of receiving the first payment reflecting the change. BAM 105. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105. These changes include, but are not limited to changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105. This includes completion of necessary forms. BAM 105. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105.

Simplified reporting (SR) groups are required to report only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. BAM 200. If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200.

The only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. Groups report if their actual income for a month exceeds 130 percent of poverty level. BAM 200.

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 evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

In the present case, the Department has established that Respondent was aware of the responsibility to timely and accurately report to the Department when her group's household income exceeded the SR income limit based on the group size. Here, the Department has shown that Respondent exceeded the SR limit of \$2,687.00 for a group size of 5 in May 2009 and was obligated to report the excess income by June 10, 2009. Because Respondent intentionally failed to timely report that her group reached the SR limit, she received an OI of FAP benefits. Respondent's signature on the Assistance Application in this record certifies that she was aware that fraudulent participation in FAP could result in criminal, civil or administrative claims. Respondent had no apparent physical or mental impairment that limited her understanding or ability to fulfill these reporting responsibilities.

This Administrative Law Judge therefore concludes that the Department has shown, by clear and convincing evidence, that Respondent committed an intentional violation of the FAP program resulting in a \$1,104.00 overissuance. This is Respondent's first FAP IPV. Consequently, the Department's request for FAP program disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law concludes that:

- Respondent **did** commit an IPV.
- Respondent **did** receive a FAP overissuance in the amount of \$1,104.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,104.00 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from FAP for a period of 12 months.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 14, 2013

Date Mailed: May 14, 2013

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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.

CAP/aca

cc:

