

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201331931
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: June 19, 2013
County: Saginaw

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 three-way telephone hearing was held on June 19, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG). Respondent appeared and provided testimony.

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 March 5, 2013 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 August 1, 2011 through June 30, 2012.
4. Respondent was aware of the responsibility to timely report to the Department any changes in household circumstances including changes in residency.
5. Respondent had no apparent physical or mental impairment that would limit his understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is August 1, 2011 through June 30, 2012.
7. During the alleged fraud period, Respondent was issued \$1,690.00 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 \$1,690.00.
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.

An Intentional Program Violation (IPV) is a benefit overissuance (OI) resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. See Bridges Program Glossary (BPG) at page 24.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the 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.

In the present case, the Department contends that Respondent made purchases in the State of Indiana from June 2011 through June 2012 and that only two purchases were made in the State of Michigan during this time period. The Department further alleges that Respondent failed to report this change timely and properly. Respondent, on the other hand, contends that while he was incarcerated in Indiana, his wallet and Michigan-issued Electronic Benefit Transfer (EBT) card was stolen. Respondent stated that the person who stole the EBT card made unauthorized purchases during the fraud period.

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).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The record contained an Electronic Benefit Transfer (EBT) History of FAP purchases during the time period in question which demonstrated that the card was used in Indianapolis, Indiana and [REDACTED], Michigan. Respondent lived in Indianapolis and had family in [REDACTED] during the period of time in question. This is not a coincidence. This evidence shows that it was Respondent who used the EBT card or someone used the card with his knowledge or consent. The Department has established that Respondent was aware of the responsibility to timely and accurately report to the Department all household changes in residency. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 (ten) days. BAM 105. Respondent's signature on the Assistance Application in this record certifies that he was aware that fraudulent participation in FAP could result in criminal, civil or administrative claims. The EBT History of FAP purchases during the time period in question demonstrated that Respondent used his Michigan-issued EBT card in Indiana for 30 (thirty) days or more. The evidence also shows that Respondent did not report this to the Department within 10 days as required

per policy. In addition, Respondent had no apparent physical or mental impairment that limits his 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 total \$1,690.00 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 \$1,690.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1,690.00 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: June 20, 2013

Date Mailed: June 21, 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:

