

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2013-6256  
Issue No.: 3055  
Case No.: [REDACTED]  
Hearing Date: March 14, 2013  
County: Benzie

**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 March 14, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] [REDACTED] of the Office of Inspector General (OIG). Respondent and [REDACTED] [REDACTED] (Respondent's fiancé) both appeared via telephone and provided testimony.

**ISSUES**

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

**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 October 22, 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 February 1, 2011 through December 31, 2011.

4. Respondent was aware of the responsibility to report to the Department any change in circumstances within 10 (ten) days.
5. Respondent had no apparent physical or mental impairment that would limit his understanding or ability to fulfill the 10 (ten) day reporting requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is February 1, 2011 through December 31, 2011.
7. During the alleged fraud period, Respondent was issued \$ [REDACTED] in FAP benefits from the State of Michigan.
8. Respondent was entitled to \$0 in FAP during this time period.
9. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED]
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.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700. According to BAM 720, "Suspected IPV" means an OI exists for which all three of the following conditions exist:

- 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.

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.

For FAP cases, the Department will disqualify an active or inactive recipient who:

- Is found by a court or hearing decision to have committed IPV, or
- Has signed a Request for Waiver of Disqualification Hearing (DHS-826) or Disqualification Consent Agreement (DHS-830), or
- Is convicted of concurrent receipt of assistance by a court, or
- For FAP, is found by SOAHR or a court to have trafficked FAP benefits.

BAM 720.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. BAM 720. If the court does not address disqualification in its order, the standard period applies. 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.

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. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105.

A person must be a Michigan resident to be eligible for all programs. BEM 220. The Department must verify that the individual lives in the area the local office serves. BEM 220.

In the present case, the Department contends that Respondent was guilty of an IPV because he knowingly and intentionally failed to inform the Department that he left the State of Michigan and used his Michigan-issued EBT card out of state for FAP benefits for a period of 30 (thirty) days or more. During this time period (February 1, 2011

through December 31, 2011), the Department alleges Respondent was ineligible for FAP benefits.

Respondent, on the other hand, claims that he did not relocate from Michigan during the above time period. Respondent stated that he visited Tennessee to assist his fiancé's mother who had fallen ill and used his Michigan EBT card for food during this time period. However, Respondent indicated, he did not use the Michigan EBT card for 30 consecutive days. Respondent's fiancé only testified that Respondent accompanied her to Tennessee to assist her mother.

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 instant matter, this Administrative Law Judge finds that the Department has established that Respondent was aware of the responsibility to report to the Department that he had left Michigan to visit Tennessee for 30 days or more. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. BAM 105.

The record evidence shows that Respondent signed an application for assistance on February 9, 2011 where he acknowledged his responsibility to report changes to the Department within 10 days. Through his signature, Respondent certified that he was aware that fraudulent participation in FAP could result in criminal or civil or administrative claims. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities.

In addition, the Department also provided evidence that Respondent used the Michigan EBT card from December, 2010 through April, 2011 exclusively outside of Michigan. During this time period, Respondent used the EBT card in Tennessee and, on two occasions, in Arizona. These records also show that Respondent continued to use the Michigan EBT card in exclusively in Tennessee from May, 2011 through January, 2012.

The Administrative Law Judge does not find Respondent's testimony persuasive weighed against the documentary evidence provided by the Department. 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. 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:

1. Respondent did commit an IPV.
2. Respondent did receive an overissuance of program benefits in the amount of \$ [REDACTED] from the FAP program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] 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: March 18, 2013

Date Mailed: March 18, 2013

**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/las

cc:

[REDACTED]