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

IN THE MATTER OF:

[redacted]

Registration No: 20136326
Issue No: 3055
Case No: [redacted]
Hearing Date: April 25, 2013
County: Saginaw County DHS

Administrative Law Judge: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge in accordan ce with 7 CFR 273.16, MCL 400.9, MCL 400.37, and Mi ch Admin Code, R 400.3130, on the Department of Human Services' (the Depar tment's) request for hearing. After due notice, a hearing was held on April 25, 2013, at whic h Re spondent failed t o appear. The hearing was held in Respondent's absence in a ccordance with Department of Human Services Bridges Adm inistrative Manual (BAM) 720, pp 9- 10. The Department was represented by [redacted] a regulation agent with the department's Office o f Inspector General (OIG).

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 conv incing evidenc e pertaining to the whole record, the Administrative Law Judge finds as material fact:

1. The Depar tment's OIG filed a r equest for hearing to establish an over issuance of FAP benefits received as a result of a determination that Respondent committed a first IPV in this program. The agenc y further requested that Respondent be disqualified from re ceiving further FAP benefits for a period of ten years.

2. On August 17, 2009, Respondent signed an assistance application (DHS-1171) and reported therein that she resi ded in Michigan. In signing the application, Respondent certified with her signature, under penalty of perjury, that the application had been e xamined 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. 12-26; Department Exhibit 6, pp. 42-45)

3. During the period July 8, 2010 through March 28, 2011, Respondent used her Michigan Bridge card exclusively in the states of Mississippi and New York, and failed to timely report that she was no longer a Michigan resident during this period of time. (Department Exhibit 2, pp. 27-31)

4. On April 5, 2011, the department obtained verification that Respondent received concurrent benefits from both the state of New York and the state of Michigan during the alleged fraud period. (Department Exhibit 3, pp. 32-34)

5. As a result of Respondent's refusal or failure to properly report that she was no longer a Michigan resident, she received an over issuance of FAP benefits in the amount of $3,861.00 during the period September 1, 2010 through March 31, 2011. (Department Exhibit 4, pp. 35-36)

6. Respondent was clearly instructed and fully aware, or should have been fully aware, of her responsibility to report all changes in circumstances, including her change of residency, to the Department within ten days of the occurrence, as required by agency policy.

7. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with her reporting responsibilities.

8. This was the first determined IPV committed by Respondent involving the FAP program.

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. Agency policies pertaining to the FAP are found in the BAM, Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230A.

In the present matter, the Department requested a hearing to establish an over issuance of FAP benefits, claiming that the over issuance was a result of an IPV committed by Respondent. Further, the Department asked that Respondent be disqualified from the FAP for a period of ten years.

To be eligible for FAP benefits, a person must be a Michigan resident. For FAP purposes, a person is considered to be a Michigan resident if he is living in the State, except for vacationing, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p 1. Generally, a client is responsible for reporting any change in circumstances, including a change in residency, that may affect eligibility or benefit level within ten days of the change. 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, IPVs 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 April 25, 2013 disqualification hearing, the OIG provided credible, undisputed, and sufficient testimony and other evidence establishing that, on August 17, 2009, Respondent signed an assistance application (DHS-1171) and reported therein that she resided in Michigan. 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, during the period July 8, 2010 through March 28, 2011, Respondent used her Michigan Bridge card exclusively in the states of Mississippi and New York, and failed to timely report that she was no longer a Michigan resident during this period of time. The OIG further established that Respondent received concurrent benefits from both the state of New York and the state of Michigan during the alleged fraud period. Finally, the OIG established that, as a result of Respondent's refusal or failure to properly report that she was no longer a Michigan resident, she received an over issuance of FAP benefits in the amount of $3,861.00 during the period September 1, 2010 through March 31, 2011.

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).

Respondent was, or should have been, fully aware of her responsibility to timely report her change of residence. Moreover, Respondent's signature on her assistance application established that she was, or should have been, fully aware that the intentional withholding or misrepresentation of information potentially affecting her 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 her ability to understand and fulfill her reporting responsibilities. See BEM 720, p 1.

Based on the credible and undisputed 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 an over issuance of FAP benefits in the amount of $3,861.00 during the period September 1, 2010 through March 31, 2011. Further, because the OIG established Respondent's concurrent receipt of benefits (i.e., receipt of benefits in more than one State at the same time), the ten-year disqualification period is appropriate.

DECISION AND ORDER

Based on the above findings of fact and conclus ions of law, this Administrative Law Judge decides that Respondent committed an intentional program violation by refusing or failing to report a change in state residency.

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 $1,600.00; and

- Respondent is personally dis qualified from participation in t he FAP program for ten years. 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: April 26, 2013

Date Mailed: April 29, 2013

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

SDS/aca

cc: [redacted]