

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

IN THE MATTER OF:

[REDACTED]

Registration No: 20137346
Issue No: 3055
Case No: [REDACTED]
Hearing Date: January 24, 2013
Genesee County DHS #2

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 January 24, 2013, at which Respondent failed to appear. The hearing was held in Respondent's absence in accordance with Bridges Administrative Manual (BAM) 720, pp 9-10. The Department was represented by [REDACTED], a regulation agent with the department's Office of 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 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 OIG further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year.
2. On March 27, 2009, Respondent signed an assistance application (DHS-1171) and, in doing so, Respondent acknowledged his obligation to report changes in his circumstances and that he understood if he intentionally gave false or misleading information, misrepresented, hid, or withheld facts that caused him to receive assistance he should not have

received, he could be prosecuted for fraud and/or be required to repay the amount wrongfully received. (Department Exhibit 1, pp. 8-23)

3. On December 13, 2011, the department obtained verification that Respondent was incarcerated from April 7, 2009 through June 30, 2009 and from February 1, 2010 through July 22, 2010; and Respondent was on tether from June 30, 2009 through February 1, 2010. (Department Exhibit 2)
4. On June 14, 2009, March 22, 2010, March 25, 2010, April 17, 2010, June 15, 2010, respectively, Respondent completed and signed a semi-annual contact form, a state emergency relief application, a redetermination, a state emergency relief application, and a redetermination and failed to report in any of these forms that he was incarcerated. (Department Exhibits 3, pp. 25-26; 5, pp. 33-48; 6, pp. 49-53; 7, pp. 54-57; 8, pp. 58-61; 10, pp. 63-64)
5. In signing the semi-annual contact report on June 14, 2009, Respondent acknowledged his understanding that if he traded or sold his food assistance or Bridge card (known as trafficking), he would lose his FAP benefits for one year for the first violation, two years for the second violation, and for life for the third violation. (Department Exhibit 3, pp. 25-26)
6. During the periods April 10, 2009 through June 29, 2009 and February 8, 2010 through July 19, 2010, while Respondent remained incarcerated, the Michigan Bridge card issued to Respondent was used in the states of Michigan, Illinois, and Maryland. (Department Exhibit 4, pp. 27-32)
7. At no time during the periods April 10, 2009 through June 29, 2009 and February 8, 2010 through July 19, 2010, while Respondent remained incarcerated, did Respondent report that his Michigan Bridge Card had been lost or stolen. (Department Exhibit 16)
8. During the period June 30, 2009 through February 1, 2010, while Respondent remained on tether, the Michigan Bridge card issued to Respondent was used in the states of Michigan and Maryland. (Department Exhibit 4, pp. 27-32)
9. At no time during the period June 30, 2009 through February 1, 2010, while Respondent remained on tether, did Respondent report that his Michigan Bridge Card had been lost or stolen. (Department Exhibit 16)

10. During the period July 25, 2010 through July 25, 2011, the Michigan Bridge card issued to Respondent was used almost exclusively in the state of Maryland. (Department Exhibit 4, pp. 27-32)
11. At no time during the period July 25, 2010 through July 25, 2011, did Respondent report that his Michigan Bridge Card had been lost or stolen. (Department Exhibit 16)
12. On November 23, 2010, March 25, 2011, April 27, 2011, and June 10, 2011, Respondent signed three redeterminations and one assistance application, respectively. In each form, Respondent reported that he resided in Flint, Michigan. Respondent further acknowledged with his signature his understanding that if he intentionally gave false or misleading information, misrepresented, hid, or withheld facts that caused him to receive assistance he should not have received; he could be prosecuted for fraud and/or be required to repay the amount wrongfully received. (Department Exhibit 11, pp. 65-68; Exhibit 12, pp. 69-72; Exhibit 13, pp. 73-75; Exhibit 14, pp. 76-95)
13. As a result of Respondent's refusal or failure to timely and properly report to the Department his incarceration, and as a result of Respondent having trafficked his FAP benefits, he received an over issuance of FAP benefits in the amount of \$ [REDACTED] during the period April 1, 2009 through September 30, 2011. (Department Exhibit 18, pp. 118-125)
14. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to report all changes in circumstances, including his change of residency, to the Department within ten days of the occurrence, as required by agency policy.
15. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with his reporting responsibilities.
16. This was the first determined 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. 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 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 FAP eligibility or benefit level, including a change in group composition, within ten days of the change. BAM 105, p 7.; BEM 220, p 1.

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.

Here, during the January 24, 2013 disqualification hearing, the OIG provided credible, undisputed, and sufficient testimony and other evidence establishing that, despite having acknowledged on multiple assistance applications and/or redeterminations his understanding of his obligation to do so, Respondent failed to timely or properly report to the Department that he was incarcerated from April 7, 2009 through June 30, 2009 and from February 1, 2010 through July 22, 2010; and that he was on tether from June 30, 2009 through February 1, 2010. The OIG further established that during the period April 10, 2009 through July 25, 2011, while Respondent was either incarcerated, on a tether, or by his report living in Flint, Michigan, his Michigan-issued Bridge card was used almost exclusively out of state, without Respondent having reported that his Bridge card had been lost or stolen. The OIG further established that, as a result of Respondent's refusal or failure to timely and properly report to the Department his incarceration, tether status, and residency, and as a result of Respondent having trafficked his FAP benefits, he received an over issuance of FAP benefits in the amount of \$ [REDACTED] during the period April 1, 2009 through September 30, 2011.

Respondent was, or should have been, fully aware of his responsibility to timely report his incarceration, tether status, and change of residency, if any. Moreover, Respondent's signature on numerous assistance applications 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. Likewise, when he signed a semi-annual contact report on June 14, 2009, Respondent acknowledged his understanding that if he traded or sold his food assistance or Bridge card (known as trafficking), he would lose his FAP benefits for one year for the first violation, two years for the second violation, and for life for the third violation. 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.

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).

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 over issuance of FAP benefits in the amount of \$ [REDACTED] during the period April 1, 2009 through September 30, 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 program violation involving the FAP program.

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 \$ [REDACTED]
- 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: January 30, 2013

Date Mailed: January 30, 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/cr

cc:

[REDACTED]