

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

**IN THE MATTER OF:**



Registration No: 201331314  
Issue No: 3055  
Case No: [REDACTED]  
Hearing Date: August 8, 2013  
Livingston County DHS

**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 Michigan 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 August 8, 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, and Section 72 of the Michigan Administrative Procedures Act, MCL 24.271 *et al.* 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 agency further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year.
2. On February 28, 2012, Respondent completed and signed a redetermination (DHS-1010). In doing so, Respondent certified with his signature, under penalty of perjury, that the redetermination had been examined by or read to him and, to the best of his knowledge, the facts were true and complete. Respondent further certified with his signature

that he received a copy and reviewed the sections in DHS Publication 1010, Important Things About Programs & Services. Respondent further certified with his signature that all the information he had written on the form or told his DHS specialist was true. Respondent further certified with his signature that he understood he could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if he intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause him to receive assistance he should not have received. (Department Exhibit 1, pp. 10-13)

3. On December 26, 2012, Walter Broadworth, an agent with the Department's Office of Inspector General, conducted a home call at Respondent's residence, during which time Respondent reported that he has lived with his parents since May 2012. Respondent further reported that, prior to May 2012, he had lived with his daughter and his ex-wife, Jacqueline Kirchner. (Department Exhibit 2, p. 14)
4. Respondent failed to timely and accurately report to the Department that Jacqueline Kirchner was no longer a member of his FAP group as of May 2012.
5. As a result of Respondent's failure to timely and accurately report to the Department that Jacqueline Kirchner was no longer in his FAP group as of May 2012, he received an over issuance of FAP benefits on her behalf in the amount of \$ [REDACTED] for the time period July 1, 2012 through December 31, 2012. (Department Exhibit 3, pp. 15-21; Department Exhibit 4, p. 22)
6. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to report all changes in circumstances, including any changes to his FAP group's composition, 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 his reporting responsibilities.

### **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. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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.

In general, persons who live together and purchase and prepare food together are members of the same FAP eligibility determination group. BEM 212, p 5. A client is responsible for reporting any change in circumstances that may affect eligibility or benefit level, including changes in group composition with respect to members who purchase and prepare food together, 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 August 8, 2013 disqualification hearing, the OIG provided credible and sufficient testimony and other evidence establishing that on February 28, 2012, Respondent completed and signed a redetermination (DHS-1010). In doing so, Respondent certified with his signature, under penalty of perjury, that the redetermination had been examined by or read to him and, to the best of his knowledge, the facts were true and complete. Respondent further certified with his signature that he received a copy and reviewed the sections in DHS Publication 1010, Important Things About Programs & Services. Respondent further certified with his signature that all the information he had written on the form or told his DHS specialist was true. Respondent further certified with his signature that he understood he could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if he intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause him to receive assistance he should not have received.

]The OIG further established that, as of May 2012, Respondent was no longer living with his ex-wife, [REDACTED], and Respondent failed to timely and accurately report this change in his FAP group's composition to the Department. The OIG further established that, as a result of Respondent's failure to timely and accurately report to the Department that Jacqueline Kirchner was no longer in his FAP group as of May 2012, he received an over-issuance of FAP benefits on her behalf in the amount of \$ [REDACTED] for the time period July 1, 2012 through December 31, 2012.

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).

Consequently, based on the undisputed testimony and evidence presented by the OIG, this 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] for the time period July 1, 2012 through December 31, 2012. Further, because the OIG established that 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.

It is therefore ORDERED THAT:

- The Department shall initiate recoupment procedures as a result of Respondent's intentional program violation in the amount of \$ [REDACTED] and
- Respondent is personally disqualified from participation in the FAP for a period of one year. The disqualification period will begin IMMEDIATELY as of the date of this order.

/s/  
Suzanne

Department

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D. Sonneborn  
Administrative Law Judge  
for Maura D. Corrigan, Director  
of Human Services

201331314/SDS

Date Signed: August 9, 2013

Date Mailed: August 9, 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 lives.

SDS/hj

cc:

