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

IN THE MATTER OF:



ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

## **HEARING DECISION**

This matter is before the undersigned Admini strative Law Judge in accordance 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 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 a ccordance with Department of Human Services Bridges Administrative Manual (BAM) 720, pp 9- 10. The Department was represented by the service of a regulation agent with the d epartment'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 conv incing evidenc e pertaining to the whole record, the Administrative Law Judge finds as material fact:

- The Depar tment's OIG filed a r equest for hearing to establish an over issuance of FAP benef its received as a res ult of a determination that Respondent committed an IPV. T he OIG further requested that Respondent be disqualified from receiving further FAP benefits for a period of ten years.
- 2. On August 5, 2011, Respondent completed an assis tance application (DHS1171) wherein she reported that she was a re sident of Michigan and wherein she failed to r eport that she had pr eviously received ass istance from another state. In signing the appl ication, 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 fu rther certified with her signature that she received a c opy, reviewed, and agreed with the sections in the

assistance application Information Book let, which include the obligation t o report changes in one's c ircumstances within ten days. Responden t further certified with her signature that she understood she c ould be prosecuted for perjury and for fr aud and/or be required to repay the amount wrongfully received if s he intentionally gave false or mislead ing information, misrepresented, hid or wit hheld facts that may cause her to receive assistance she should not have received. (Department Exhibit 1, pp. 11-20)

- 3. On August 29, 2012, the Departm ent obtained verific ation from the state of Kentucky's Cabinet for Health and Family Servic es that Respondent received food assistance benefits from the state of Kentucky from August 2010 through January 2011 and from January 2012 thr ough August 2012 and failed to timely report that she wa s no longer a Michigan resident during this latter period of time. (Department Exhibit 2, pp. 21- 29)
- 4. The Department also obtained verification t hat Respondent est ablished residency in Kentucky during the alleged fraud period. (Department Exhibit 3, pp. 30-51)
- 5. As a result of Respondent's refusal or failure to prope rly report that she was no longer a Michigan resident, she received an over issuanc e of FAP benefits in the amount of \$2,630.00 during t he period March 1, 2012 through July 31, 2012. (Department Exhibit 4, p. 52)
- 6. Respondent was clearly instructed and fully aware, or should hav e been fully aware, of her res ponsibility to report all c hanges in circumstances, including her change of residency, to the D epartment within ten days of the occurrence, as required by agency policy.
- 7. There was no apparent physical or m ental 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 inv olving the FAP program.
- 9. A notice of disqualification hearing was mailed to Respondent at her last known address and was not returned by the United States Postal Service as undeliverable.

# CONCLUSIONS OF LAW

The FAP – formerly known as the Food Stam p 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 f ound in the BAM, Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). The goal of the FAP is to ens ure sound nutrition among children and adults. BEM 230A.

In the present matter, t he Department requested a heari ng to establis h an over issuance of FAP benefits, claiming that t he over issuance was a result of an IPV committed by Respondent. Further, the Department asked that Respondent b e disqualified from the FAP for a period of ten years.

To be elig ible for FA P be nefits, a person must be a Michigan resident. For FAP purposes, a person is considered to be a Michi gan resident if he is living in the State, except for vacationing, even if he has no intent to remain in the State per manently or indefinitely. BEM 220, p 1. Generally, a c lient is responsible for reporting any change in circumstances, inc luding a ch ange in re sidency, that may affect elig ibility or benefit level within ten days of the change. BAM 105, p 7.

When a client or group receives more benefit s 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 hi s or her understanding or ability to fulfill their repor ting responsibilities. [BAM 720, p 1.]

An IPV is suspected by the Department when a client int entionally withheld or misrepresented information for the purpose of es tablishing, maintaining, increasing, or preventing a reduction of, program eligibility or benefits. BAM 720, p 1. In bringing an IPV action, the agenc y carries the burden of establishing the v iolation 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 year s before the date the over iss uance was referred to an agenc y recoupment specialist, whichever is later. This period ends on the month before the benefit is corrected. BAM 720, p 6. The amount of over issuance is the benefit amount the c lient actually r eceived minus the amount the client was eligible to receive. BAM 720, p 6.

Suspected IPV matters are investigated by t he OIG. This office: refers suspected IPV cases that meet criteria for prosecution to the appropriate prosec uting attorney; refers suspected IPV cases that meet criteria for IPV administrat ive hearings to the Michiga n 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 inv olves conc urrent receipt of assistance or
  - •• The alleged fraud is committed by a state/government employee. BAM 720, p 10.

The OIG represents the Depart ment during t he hearing process in IPV matters. BA M 720, p 9. When a client is determined to have committed an IPV, the following standard periods of disqualific ation from the program are applied (unless a court orders a different length of time): one year for the fi rst IPV; two years for the second IPV; and lifetime for the third IPV. BAM 720, p 13. Further, IP Vs 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 me mbers – those member s may continue to receive benefits. BAM 720, p 12.

In this case, at the August 8, 2013 disqua lification hearing, the Dep artment's OIG provided credible, undisputed, and sufficient testimony and ot her evidence establishing

that, on August 5, 2011, Re spondent completed an assistance application (DHS1171) wherein she reported that s he was a resident of Michigan and wherein s he failed t o report that she had pr eviously received ass istance from another state. In signing the application, Respondent certified with her s ignature, 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 fur ther certified with her signature that she received a copy, reviewed, and agreed with t he sections in the a ssistance 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 perj ury and for fraud and/or be required to repay the amount wrongfully re ceived if s he intentionally gave false or mislead ing information, misrepresented, hi d or withheld facts that may cause her to receive assistance she should not have receiv ed. The OIG further established that Respondent received food assistance benefits from the state of Kentucky from August 2010 through January 2011 and from January 2012 through August 2012 and failed to timely report that she was no longer a Michigan resident during this latter period of time. The OIG further established that Respondent received concurrent benefits from both the state of Arizona and the state of Michigan during the alleged fraud period.

The OIG further establ ished that R espondent resided in Kentucky during the alleged fraud period. Finally, the OIG established that, as a result of Respondent's failure to properly report that she was no longer a Michigan resident, she received an over issuance of FAP benefits in the amount of during the period March 1, 2012 through July 31, 2012.

Testimony and other evidence must be we ighed 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 credi bility of this evidenc e 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 respon sibility to timely report her change of residence. Moreover, Respondent's signature on her assistance application establis hed that she was, or should have been, fully aware that the intentional withholding or missrepresentation 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 under stand and fulfill her reporting responsibilities. See BEM 720, p 1.

Based on the credible and undis puted testimony and other evidence presented by the OIG, the Administrative Law Judge finds that the OIG established, under the clear and convincing standard, that Resp ondent committed an IPV in this matter, resulting in an an over issuance of FAP benefits in the amount of **Sectors** during the period March 1, 2012 through July 31, 2012. Further, bec ause the OIG established Res pondent's

concurrent receipt of benefits (i.e., receip t 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:

- The Depar tment shall initiate re coupment procedures as a result of Respondent's intentional pr ogram violation in the amount of \$ and
- Respondent is personally disqualified from participation in the F AP for a period of ten years. The disqual ification period will begin to run <u>IMMEDIATELY</u> as of the date of this order.

/s/ Suzanne

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

Department

Date Signed: August 9, 2013

Date Mailed: August 13, 2013

**<u>NOTICE</u>**: 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/hj