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

IN THE MATTER OF: Registration No: 201345040

Issue No:

Case No:

Hearing Date: August 8, 2013

3055

Washtenaw County DHS

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 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 a regulation agent with the department's Office of Inspector General (OIG).

<u>ISSUE</u>

Whether Respondent committed an intentional program violation (IPV) involving the Food Assistance Program (FAP) and the Stat e Emergency Relief (SER) program and whether Respondent received an over is suance of FAP and SER benef its that the Department is entitled to recoup?

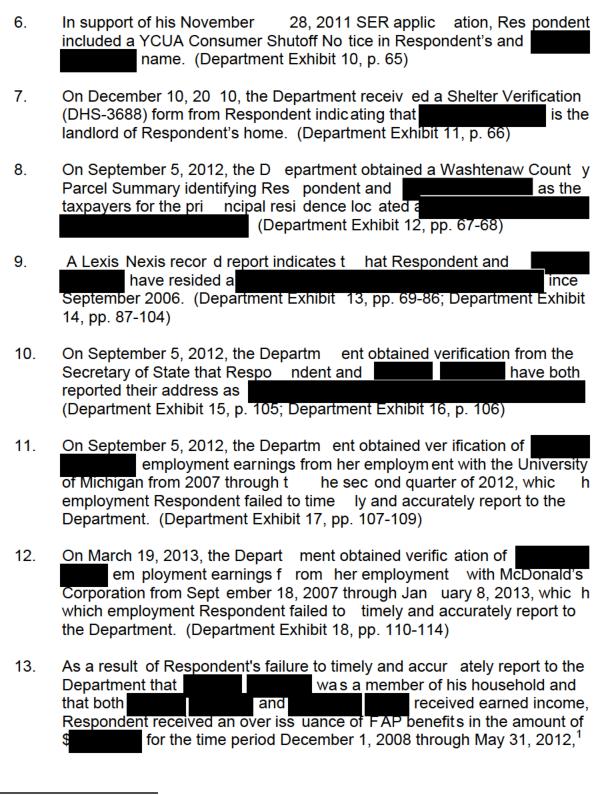
FINDINGS OF FACT

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 and SER be nefits 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 December 18, 2008, Respondent completed an assistance application (DHS-1171) and indicated therein that his household included himself and his two daughters, and and application and In s igning the application, Respondent certified with his signature, under penalty of perjury, that the application 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 c opy, reviewed, and agreed with the sections in the assistance application Information Booklet, which include the obligat ion to report changes in one's c ircumstances within ten days. Respondent further ce rtified with his signature that he understood he could be prosecuted for perjury and for fraud and/or be required to repay the am ount wrongfully received if he intentionally gave false or misleading information, misr epresented, hid or withheld f acts that may caus e him to receive as sistance he should not have received. (Department Exhibit 1, pp. 13-20)

- 3. On November 20, 2009, October 28, 2010, and October 21, 2011, respectively, Respondent completed three redeterminations (DHS-1010), wherein Respondent again indic ated that his household inc luded himself and his two daughters, and In signing the redeterminations. Respondent ce rtified with his signature, under penalty of perjury, that the redet erminations had been examined by or read to him and, to the best of his knowledge, the f acts were true and complete. Respondent further certified with his signature that he received a copy and reviewed the sections in DHS Publicatio n 1010, Important Things About Programs & Services. Respondent further certified with his signature that all the information he had wr itten on the form or told to 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 assist ance he should not have received. (Department Exhibit 2, pp. 21-24; Department Exhibit 3; pp. 25-28; Department Exhibit 4, pp. 29-32)
- 4. On October 5, 2009, November 30, 2010, March 30, 2011, May 26, 2011, June 29, 2011, November 28, 2011, re spectively, Claimant completed si x assistance applications for SER assi stance (DHS-1514) and, in doing s o, indicated that his household inclouded himself and his two daughters, and In signing the applications, Respondent certified with his signature, under penalty of perjury, that the application had been ex amined by or read to him and, to the best of his knowledge, the facts were true and complete. (Department Exhibit 5, pp. 33-37; Department Exhibit 6, pp. 38-42; Department Exhibit 7, pp. 43-47; Department Exhibit 8, pp. 48-53; Department Exhibit 9, pp. 54-59; Department Exhibit 10, pp. 60-65)
- 5. In support of his Ju ne 29, 2011 SER app lication, Respondent included a DTE Energy bill in 59)



¹ While the Department's OIG maintains that Respondent received an over issuance of FAP benefits in the amount of \$18,834.00 for the time period December 1, 2008 through May 31, 2012, the Department's OIG failed to include an over issuance budget for the months of January 2011 and November 2011 in the over issuance budget documents submitted by the Department's OIG and set forth in Department Exhibit 20.

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and an over issuance of SER benefits in the amount of \$ for the time periods of November 5, 2009 th rough November 3, 2009, December 1, 2010 through Dec ember 30, 2010, Ap ril 7, 2011 through May 6, 2011, May 27, 2011 through June 25, 2011, Ju ne 29, 2011 through July 28, 2011, and November 28, 2011 through December 27, 2011, for a total over issuance amount of \$ (Department Exhibit 19, pp. 115-123; Department Exhibit 20, pp. 124-182)

- 14. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to truthfully, timely and accurately report his household's membership and earned income to the Department within ten days of the occurrence, as required by agency policy.
- 15. There was no apparent physical or m ental impairment present that limited Respondent's ability to understand and comply with his r eporting responsibilities.
- 16. This was the first determined IPV committed by Respondent.
- 17. A notice of disqualification hearing was mailed to Respondent at his 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. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The State Emergency Relief (SER) program was establis hed by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, et seq., and by final administrative rules filed with the Secret ary of State on Oct ober 28, 1993. MAC R 400.7001-400.7049. Depar tment polic ies are found in the State Emergency Relie f Manual (ERM).

In the present matter, t he Department requested a hearin g to establis h an over issuance of FAP and SER benefits, claiming that the over issuance was the result of an IPV committed by Respondent. Further, t he Department asked that Respondent b e disqualified from the FAP program for a period of one year.

Generally, a client is res ponsible for reporting any change in circumstances that may affect eligibility or benefit level, including a change in income amount, within ten days of the change. BAM 105, p 7. With respect to earned income, a client must report any of

In general, persons who live to gether 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 confirmal irresponsible for reporting any change in 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 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,
- 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 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.

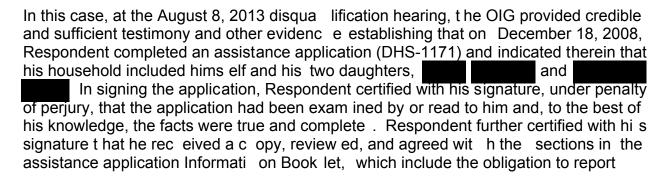
Suspected IPV matters are investigated by t he OIG. This office: refers suspected IPV cases that meet criteria for prosecution to the appropriate prosec uting attorney; refers suspected IPV cases that meet criteria for IPV administrat ive hearings to the Michiga n Administrative Hearings System (MAHS); and returns non-IPV cases back to the Department's recoupment specialist. BAM 720, p 9.

The OIG will request an IPV hearing when:

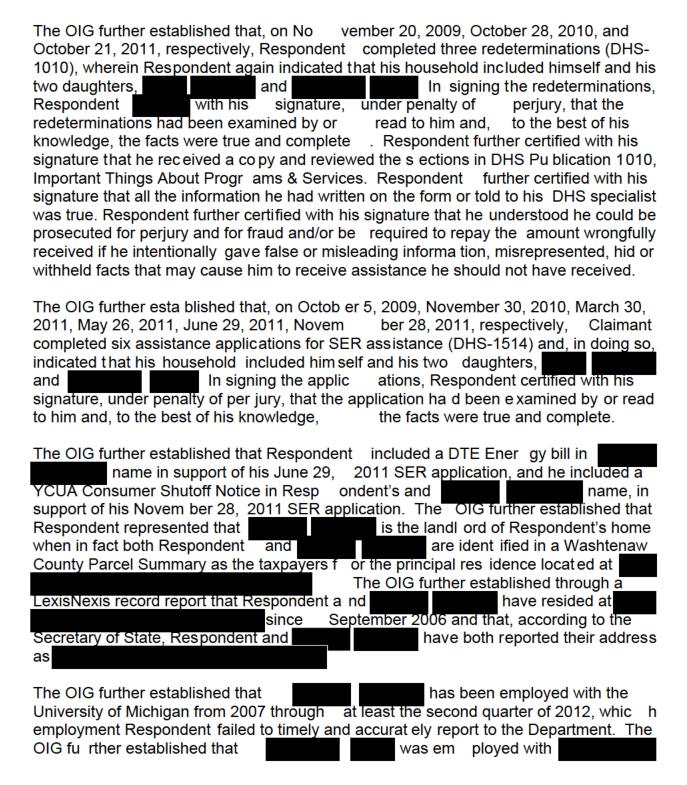
- Benefit overissuances are not forwarded to the prosecuting attorney's office;
- Prosecution of the matter is declined by the prosecuting attorney's office for a reason other than lack of evidence, and
- The total OI amount for the FAP is \$1000 or more, or
- The total OI amount is less than \$1000, 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 the 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 first 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.



changes in one's circ umstances within ten da ys. 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 in tentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause him to receive assistance he should not have received.



from Septem ber 18, 2007 through Januar y 8, 2013, which whic hemployment Respondent failed to timely and accurately report to the Department.

Finally, the OIG established that, as a resu It of Respondent's failu re to timely and accurately report to the Department that wa s a member of his household and that both and received earned income, Respondent received an over iss uance of FAP benefits in the amount of for the time period December 1, 2008 through May 31, 2012, and an over issuance of SER benefits in the amount of \$ for the time periods of November 5, 2009 through Nov ember 3, 2009, Decem ber 1, 2010 through December 30, 2010, April 7, 2011 through May 6, 2011, May 27, 2011 through June 25, 2011, June 29, 2011 through July 28, 2011, and November 28, 2 011 through December 27, 2011, for a total over issuance amount of \$

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 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 un disputed 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 December 1, 2008 through May 31, 2012, and an over issuance of SER benefits in the amount of \$\frac{1}{2}\$ for the time periods of November 5, 2009 through November 3, 2009, December 1, 2010 through December 30, 2010, April 7, 2011 through May 6, 2011, May 27, 2011 through June 25, 2011, June 29, 2011 through July 28, 2011, and November 28, 2011 through December 27, 2011, for a total over issuance amount of Further, because the OIG established that this was Respondent's first IPV, the one-year disqualification period from the FAP program 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.

It is therefore ORDERED THAT:

- The Depar tment shall initiate re coupment procedures as a result of Respondent's intentional program violation in t he amount of \$
- Respondent is personally disqualified from participation in the F AP for a period of one year. The disqualification period will begin <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 16, 2013

Date Mailed: August 16, 2013

<u>NOTICE</u>: The law pr ovides 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:

