

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201345042
Issue No: 3055
Case No: [REDACTED]
Hearing Date: August 8, 2013
Washtenaw 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 appeared and provided testimony. 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 the Medical Assistance (MA) program and whether Respondent received an over issuance of FAP and MA 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 and MA benefits received as a result of a determination that Respondent committed a first IPV in this program. The agency further requested that Respondent be disqualified from receiving further FAP benefits for a period of ten years.
2. On March 16, 2010, Respondent's wife, [REDACTED], completed and signed an assistance application (DHS-1171) and indicated that Respondent was a member of her household. In signing the application, Mrs. [REDACTED] acknowledged 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, and that she understood her failure to give timely, truthful, complete, and accurate information about her circumstances could result

in a civil or criminal action, or an administrative claim, against her. (Department Exhibit 1, pp. 13-27)

3. On July 1, 2011, Respondent's wife, [REDACTED], completed a second assistance application (DHS-1171) and indicated that Respondent was a member of her household. In signing the application, Mrs. [REDACTED] again acknowledged 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, and that she understood her failure to give timely, truthful, complete, and accurate information about her circumstances could result in a civil or criminal action, or an administrative claim, against her. (Department Exhibit 2, pp. 28-37)
4. The Department's OIG presented no evidence establishing that Respondent completed and signed an assistance application wherein he acknowledged that he received a copy, reviewed, and agreed with the sections in the assistance application Information Booklet, including the obligation to report changes in one's circumstances within ten days.
5. Respondent was a recipient of FAP benefits from June 2011 through March 2011. (Department Exhibit 5, pp. 46-47)
6. During the periods June 10, 2010 through September 14, 2010, September 21, 2010 through November 19, 2010, December 7, 2010 through December 10, 2010, January 9, 2011 through February 14, 2011, and March 9, 2011 through March 29, 2011, Respondent used his Michigan Bridge card in the state of Iowa. (Department Exhibit 3, pp. 38-42)
7. On or about March 2012, Respondent changed his residence from the state of Michigan to the state of Iowa.
8. On August 28, 2012, the Department obtained verification from the Iowa Department of Human Services that Respondent received food assistance from the state of Iowa from March 1, 2012 through August 31, 2012 and medical assistance from June 21, 2012 through the present. (Department Exhibit 4, pp. 43-45)

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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 and MA 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 program 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 over issuance. BAM 700, p 1. A suspected IPV is defined as an over issuance 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 over issuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the over issuance 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 over issuance 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 Department's OIG will request an IPV hearing when:

- Benefit over issuances 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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222, p. 1. A person cannot receive FAP in more than one state for any month.

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 evidence establishing that Respondent's wife, [REDACTED], completed and signed two assistance applications (DHS-1171) on March 16, 2010 and July 1, 2011, respectively. While Mrs. [REDACTED] indicated in these applications that Respondent was a member of her household, Mrs. [REDACTED] signed the applications and, in doing so, acknowledged 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, and that she understood her failure to give timely, truthful, complete, and accurate information about her circumstances could result in a civil or criminal action, or an administrative claim, against her.

The OIG presented no evidence establishing that Respondent completed and signed an assistance application wherein he acknowledged that he received a copy, reviewed, and agreed with the sections in the assistance application Information Booklet, including the obligation to report changes in one's circumstances within ten days.

The OIG further established that, during the periods June 10, 2010 through September 14, 2010, September 21, 2010 through November 19, 2010, December 7, 2010 through December 10, 2010, January 9, 2010 through February 14, 2011, and March 9, 2011 through March 29, 2011, Respondent used his Michigan Bridge card in the state of Iowa. The OIG further established that Respondent received food assistance from the state of Iowa from March 1, 2012 through August 31, 2012 and medical assistance from June 21, 2012 through the present.

Finally, the OIG asserted that Respondent received an over issuance of FAP benefits from August 1, 2010 through June 30, 2012 in the amount of \$ [REDACTED] but acknowledged that the months of April 2011 through April 2012 had been expunged from this alleged over issuance period and that the months of May and June 2012 may also have been expunged from this alleged over issuance if Respondent did not use the benefits (and Respondent indicated that he had not). The OIG further asserted that Respondent received an over issuance of MA benefits from August 1, 2011 through May 31, 2011 in the amount of \$ [REDACTED].

Also at the August 8, 2013 hearing, Respondent acknowledged that he did travel back and forth from Michigan to Iowa during the time period in question to visit and stay with his wife and look for employment while she attended school – however, he testified that he did not know that he was required to report these short absences to the Department and close his FAP benefits case. Respondent further testified that his failure to report his absences while in Iowa was not an intentional effort on his part to defraud the state of Michigan. Respondent further testified that he didn't actually move to Iowa until 2012 when he finally found employment there.

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).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, because the OIG did not offer into evidence any testimony or documentation of an application signed by *Respondent* wherein he acknowledged his obligation to report changes in his circumstances, the OIG failed to establish with clear and convincing evidence that Respondent was clearly and correctly instructed regarding his reporting responsibilities or that Respondent intentionally failed to report information. Consequently, the OIG has failed to establish that Respondent committed an intentional program violation with respect to the FAP or MA program. This Administrative Law Judge further finds that, because the OIG failed to establish with clear and convincing evidence that Respondent changed his residency prior to his acknowledged relocation in Iowa in 2012, the OIG failed to establish that Respondent received more FAP and MA benefits than he was entitled to receive.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that Respondent did not commit an intentional program violation and did not receive an over issuance of FAP and MA benefits.

It is therefore ORDERED that the Department shall delete the over issuance and cease any recoupment action.

/s/
Suzanne

Department

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

Date Signed: August 9, 2013

Date Mailed: August 13, 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:

