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

IN THE MATTER OF:

[redacted]

Registration No: 201360391
Issue No: 3055
Case No: [redacted]
Hearing Date: October 30, 2013
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

Upon the request for a hearing by the Depar tment of Human Services (Department), this matter is before the under signed Administrative Law J udge pursuant to MCL 400.9, and in acc ordance with Titles 7, 42 and 45 of the Code of Federal Regulat ion (CF R), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a hearing was held on Oc tober 30, 2013, at which Respondent failed to appear. The hearing was held in Re spondent's absenc e pursuant to 7 CF R 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5). The Department was represented by [redacted] a regulat ion 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 conv incing evidenc e pertaining to the whole record, the Administrative Law Judge finds as material fact:

1. The Depar tment's OIG filed a r equest for hearing to establish an over issuance of FAP benefits received as a result of a determination that Respondent committed a first IPV in this program. The agenc y further requested that Respondent be disqualified from re ceiving further FAP benefits for a period of one year.

2. On July 15, 2012, Respondent completed an assistance application (DHS-1171) and indic ated therein that he is a Michigan resident. In signing the application, Respondent certified with his electronic signature, under penalty of perjury, that the application had been examined by or read to him and, t o the best of his knowledge, the facts were true and complete. Respondent further certif ied with his signature t hat he 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. 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. 11-41)

3. On March 6, 2013, the Department obtained verification that Respondent was employed with [redacted] from July 14, 2012 through October 27, 2012 and, during that time, had reported to his employer that his address was: [redacted] (Department Exhibit 2, pp. 42-44)

4. During the period June 19, 2012 through March 15, 2013, Respondent used his Michigan Bridge card exclusively in the state of Kentucky and failed to timely report that he was no longer a Michigan resident during this period of time. (Department Exhibit 3, pp. 45-48)

5. As a result of Respondent's refusal or failure to properly report that he was no longer a Michigan resident, he received an over issuance of FAP benefits in the amount of $[redacted] during the period August 1, 2012 through March 31, 2013. (Department Exhibit 4, pp. 49-50)

6. 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.

7. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with his reporting responsibilities.

8. This was the first determined IPV committed by Respondent.

9. Subsequent to the scheduling of the hearing and prior to the hearing date, the Notice of Disqualification Hearing and accompanying documents were mailed to Respondent at the last known address and were returned to the Michigan Administrative Hearing System by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual

(BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq*., and Mich Admin Code, R 400.3001 through R 400.3015.

In the present matter, the Department requested a hearing to establish an over issuance of FAP benefits, claiming that the over issuance was the result of an IPV committed by Respondent. Further, the Department asked that Respondent be disqualified from the FAP program for a period of one year.

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.

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 12.

A suspected IPV means an OI exists for which all three of the following conditions exist:

- 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 reporting responsibilities.

BAM 700 (2013), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (2013), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, at the October 30, 2013 disqualification hearing, the OIG provided credible, sufficient, undisputed testimony and other evidence establishing that, on July 15, 2012, Respondent completed an assistance application (DHS-1171) and indicated therein that he is a Michigan resident. In signing the application, Respondent certified with his electronic 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 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. 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 Respondent was employed with Kroger Stores from July 14, 2012 through October 27, 2012 and, during that time, had reported to his employer that his address was: 102 Spring Creek Court, Louisville, Kentucky 40218. The OIG further established that, during the period June 19, 2012 through March 15, 2013, Respondent used his Michigan Bridge card exclusively in the state of Kentucky and failed to timely report that he was no longer a Michigan resident during this period of time. Finally, the OIG established that, as a result of Respondent's refusal or failure to properly report that he was no longer a Michigan resident, he received an over issuance of FAP benefits in the amount of $1,601.00 during the period August 1, 2012 through March 31, 2013.

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 Respondent was, or should have been, fully aware of his responsibility to timely report his change of residence. Moreover, Respondent's signature on his assistance application 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. 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.

Consequently, 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 amount of $[redacted] during the period August 1, 2012 through March 31, 2013. 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, and for the reasons stated on the record, this Administrative Law Judge decides that Respondent committed an intentional program violation and received an overissuance of FAP benefits in the amount of $[redacted] during the period August 1, 2012 through March 31, 2013.

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

Date Signed: October 31, 2013

Date Mailed: October 31, 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: [redacted]