

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201320097
Issue No: 3055
Case No: [REDACTED]
Hearing Date: May 9, 2013
Branch 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 Mich 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 May 9, 2013, at which Respondent failed to appear. The hearing was held in Respondent's absence in accordance with Department of Human Services Bridges Administrative Manual (BAM) 720, pp 9-10. 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 a first IPV in this program. The agency further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year.
2. On July 28, 2011, Respondent completed an assistance application (DHS-1171) and reported therein that he had not been convicted of a drug-related felony occurring after August 22, 1996. In signing 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 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 3, pp. 16-31)

3. On June 17, 2011, the Department obtained verification that Respondent was incarcerated from February 13, 2011 through at least June 17, 2011, which incarceration Respondent failed to properly report to the Department.
4. During the period February 21, 2011 through June 17, 2011, during which time Respondent was incarcerated, purchases continued to be made with his issued Michigan Bridge card in the state of Michigan. (Department Exhibit 5, pp. 33-38)
5. On July 13, 2012, the Department obtained verification that Respondent was convicted of Controlled Substance – Possession Methamphetamine on [REDACTED] 2008 in Branch County Circuit Court, which conviction Respondent failed to properly report to the Department. (Department Exhibit 1, pp. 11-12)
6. At no time during the course of Respondent's receipt of FAP benefits did Respondent have an authorized representative to whom his FAP benefits were issued. (Department Exhibit 6, p. 39)
7. As a result of Respondent's refusal or failure to properly report his [REDACTED], 2008 drug-related felony conviction to the Department, as well as his February 21, 2011 incarceration, he received an over issuance of FAP benefits in the amount of \$2,225.00 during the period July 1, 2010 through June 30, 2011. (Department Exhibit 8, pp. 44-45)
8. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to truthfully report his drug-related felony conviction and to report all changes in circumstances, including his incarceration, to the Department within ten days of the occurrence, as required by agency policy.
9. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with his reporting responsibilities.

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

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. 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 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 one year.

Department policy provides that persons convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance. BEM 203. Department policy further provides that a person who has violated a condition of probation or parole imposed under a federal or state law is disqualified from assistance as long as the violation occurs. BEM 203.

A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if: (i) the terms of probation or parole are violated; and (ii) the qualifying conviction occurred after August 22, 1996. BEM 203. If an individual is not in violation of the terms of probation or parole, FAP benefits must be issued to an authorized representative. BEM 203.

Department policy further provides that a client is responsible for reporting within ten days any change in circumstances that may affect eligibility or benefit level, including a criminal justice disqualification and an incarceration. 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 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, IPV's 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 May 9, 2013 disqualification hearing, the OIG provided credible, sufficient, undisputed testimony and other evidence establishing that, on July 28, 2011, Respondent completed an assistance application (DHS-1171) and reported therein that he had not been convicted of a drug-related felony occurring after August 22, 1996. In signing 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 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 convicted of Controlled Substance – Possession Methamphetamine on [REDACTED], 2008 in Branch County Circuit Court, which conviction is a felony that Respondent failed to properly report to the Department – and, had Respondent properly reported this conviction to the Department, any FAP benefits to which he would have been entitled could only have been issued to an authorized representative. The OIG further established that Respondent was incarcerated from February 13, 2011 through at least June 17, 2011, which incarceration Respondent also failed to properly report to the Department. The OIG further established that the period February 21, 2011 through June 17, 2011, during which time Respondent was incarcerated, purchases continued to be made with his issued Michigan Bridge card in the state of Michigan. Finally, the OIG established that, a result of Respondent's refusal or failure to properly report his [REDACTED], 2008 drug-related felony conviction to the Department, as well as his February 21, 2011 incarceration, he received an over issuance of FAP benefits in the amount of \$2,225.00 during the period July 1, 2010 through June 30, 2011.

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).

Respondent was, or should have been, fully aware of his responsibility to truthfully report his drug-related felony conviction and to report all changes in circumstances, including his incarceration, to the Department within ten days of the occurrence, as required by agency policy. 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.

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 \$2,225.00 during the period July 1, 2010 through June 30, 2011. Further, because 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 conclusions of law, this Administrative Law Judge decides that Respondent committed an intentional program violation by refusing or failing to report his drug-related felony conviction and incarceration to the Department.

It is therefore ORDERED THAT:

- Respondent shall reimburse the Department for the FAP benefits ineligibly received as a result of his intentional program violation in the amount of \$2,225; and
- Respondent is personally disqualified from participation in the FAP for a period of one year. The disqualification period will begin to run 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: May 15, 2013

Date Mailed: May 15, 2013

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NOTICE: Respondent may appeal this decision and order to the circuit court for the county in which he resides within 30 days of receipt of this decision and order.

SDS/aca

cc:

