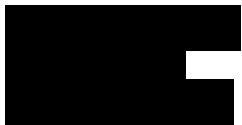


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2013-22864
Issue No: 3055
Case No: 102225112
Hearing Date: August 27, 2013
Genesee-06 County DHS

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on August 27, 2013 from Lansing, Michigan. The Department was represented by [REDACTED] [REDACTED] of the Office of Inspector General (OIG). The Respondent appeared and provided testimony.

ISSUES

1. Did Respondent receive an overissuance (OI) of Family Independence Program (FIP), Food Assistance Program (FAP), State Disability Assistance (SDA), Child Development and Care (CDC) benefits that the Department is entitled to recoup?
2. Did Respondent commit an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving Family Independence Program (FIP), Food Assistance Program (FAP), State Disability Assistance (SDA), Child Development and Care (CDC)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on January 14, 2013 to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits during the period of September 1, 2011 through December 31, 2011.

4. On or around March of 2011, the Claimant stopped working to take a medical leave of absence. Around this time, the Claimant notified the Department of this change.
5. In approximately June of 2011, the Claimant notified the Department that she was returning to work in July of 2011. The Claimant left a voice message with her worker explaining the details.
6. From June 2011 through December 31, 2011, the Department failed to update the Claimant's case to reflect a return to work.
7. From September 1, 2011 through December 31, 2011, the Claimant was issued \$ [REDACTED] in FAP benefits.
8. From September 1, 2011 through December 31, 2011, the Claimant was eligible for \$ [REDACTED] in benefits.
9. Respondent was was not aware of the responsibility to report all changes within 10 days.
10. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
11. The Department has has not established that Respondent committed an IPV.
12. A notice of disqualification hearing was mailed to Respondent at the last known address and was was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

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 of Human Services (DHS or Department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

In this case, the Department has requested a disqualification hearing to establish an over issuance of benefits as a result of an IPV and the Department has asked that the respondent be disqualified from receiving benefits. The Department's manuals provide the following relevant policy statements and instructions for Department caseworkers.

When a customer client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the over issuance. BAM 700. A suspected intentional program violation means 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.

The Department suspects an intentional program violation when the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility. There must be clear and convincing evidence that the client acted intentionally for this purpose. BAM 720.

The Department's Office of Inspector General processes intentional program hearings for over issuances referred to them for investigation. The Office of Inspector General represents the Department during the hearing process. The Office of Inspector General requests intentional program hearings for cases when:

- benefit over issuances are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
 - the total over issuance amount is \$1000 or more, or
 - the total over issuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed an intentional program violation disqualifies that client from receiving program benefits. A disqualified recipient remains

a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720.

Clients that commit an intentional program violation are disqualified for a standard disqualification period except when a court orders a different period. 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 concurrent receipt of benefits. BAM 720. This is the respondent's first intentional program violation.

In the case at hand, the Department alleges the Respondent committed an intentional program violation by failing to report her return to work. However, the case worker involved did not appear and did not provide any testimony regarding the case. Therefore, the Respondent was the only witness with first-hand knowledge of what transpired. The Respondent alleges to have called the Department prior to her return to work and alleged to have left a message for her case worker indicating she had returned to work and that if anything else was needed, to contact her. Having received no response, the Respondent did not do anything else to report the changes. Because the burden of proof is clear and convincing, I do not find the lack of a case note to be sufficient enough to meet the Department's burden in establishing the Claimant's failure to notify.

Departmental policy, states that when the client group receives more benefits than the group is entitled to receive, the Department must attempt to recoup the over issuance. Repayment of an over issuance is the responsibility of anyone who was an eligible, disqualified, or other adult in the program group at the time the over issuance occurred. Bridges will collect from all adults who were a member of the case. Over issuances on active programs are repaid by lump sum cash payments, monthly cash payments (when court ordered), and administrative recoupment (benefit reduction). Over issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. BAM 725.

I have reviewed the Department's exhibits and have concluded that because the Department failed to properly budget the Claimant's income, this led to the Respondent receiving an over issuance of benefits. **Regardless of fault, the Department must attempt to recoup the over issuance.**

Accordingly, I find evidence to affirm a finding of an over issuance, but do not find sufficient evidence to establish an intentional program violation.

DECISION AND ORDER

I cannot determine by clear and convincing evidence, based upon the above findings of fact and conclusions of law, that the respondent has committed an intentional program violation of the FAP program. I do however, find evidence to indicate the Respondent received an over issuance of benefits that the Department is entitled to recoup.

The Department is therefore entitled to recoup a FAP over issuance of \$ [REDACTED] from the Respondent.

The Department shall initiate collection procedures in accordance with Department policy.



Corey A. Arendt
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 28, 2013

Date Mailed: August 28, 2013

NOTICE OF APPEAL: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

2013-22864/CAA

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAA/las

cc:

