

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-23300
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: May 8, 2013
County: Genesee County DHS #2

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

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 from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent, of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

Whether Respondent committed an Intentional Program Violation (IPV) and received an over-issuance Food Assistance Program (FAP) benefits that the department is entitled to recoup?

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 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent filed an assistance application with the department on 3/13/11, acknowledging that s/he understood her/his rights and responsibilities to report changes in household circumstances.

4. Respondent used her/his Michigan EBT card out of state exclusively from 6/05/11-3/31/12
5. Per Lexis-Nexis respondent established an out of state residency during the relevant period of time.
6. On the Assistance Applications signed by Respondent on 3/13/11, Respondent reported that she/he intended to stay in Michigan.
7. Respondent was aware of the responsibility to report changes in her/his residence to the Department.
8. Respondent had a physical or mental impairment that might limit the understanding or ability to fulfill this requirement because respondent receives SSI from the Social Security Administration at all times relevant to this case.
9. Respondent received a FAP over-issuance in the amount of \$ [REDACTED] for the time period of 8/01/10-3/31/11.
10. The Department has not established that Respondent committed an IPV.
11. This was Respondent's first IPV.
12. A notice of hearing was mailed to Respondent at the last known address, and was not returned by the US Post Office as undeliverable.

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 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 1999 AC, Rule 400.3001 through Rule 400.3015.

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

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 their reporting responsibilities.

IPV is suspected when there is 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.

The Department's OIG requests IPV hearings for cases when:

- benefit over-issuance 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 IPV 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 who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the over-issuance relates to MA. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710. 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.

In the instant case, the department OIG has established that the Respondent received an over-issuance of FAP benefits in the amount of \$[REDACTED] for the time period of 6/05/11-3/31/12. Evidence on the record indicates that respondent was no longer a resident of the State of Michigan during the relevant time period. The department OIG has established by the necessary competent, substantial and material evidence on the record that claimant received an over-issuance of Food Assistance Program benefits

which may be recouped. The department has not established an intentional program violation because respondent receives SSI, is disabled and may not have been able to formulate the requisite intent to commit an Intentional Program Violation.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, determines that clear and convincing evidence establishes, and for the reasons stated on the record, concludes that:

1. Respondent did not commit an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the Food Assistance Program.

The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] for Food Assistance Program in accordance with Department policy.

/s/
Landis Y. Lain
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 14, 2013

Date Mailed: May 15, 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/she lives.

LYL/las

cc: [REDACTED]

