

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201325329
Issue No: 3055
Case No: [REDACTED]
Hearing Date: August 8, 2013
Clinton 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 by three-way conference call 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 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 an IPV. The OIG further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year.
2. On February 24, 2011, Respondent signed an assistance application (DHS-1171). In doing so, 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 1, pp. 11-30)

3. On December 2, 2011, the Department obtained verification that Respondent had been incarcerated in Clinton County Jail on April 28, 2011 with no scheduled release date. (Department Exhibit 2, p. 31)
4. Respondent failed to timely and properly report to the Department his April 28, 2011 incarceration.
5. During the period April 28, 2011 through December 22, 2011, while Respondent remained incarcerated, the Michigan Bridge card issued to Respondent was used in the state of Michigan. (Department Exhibit 4, pp. 34-36)
7. At no time during the period April 28, 2011 through December 22, 2011, while Respondent remained incarcerated, did Respondent report that his Michigan Bridge Card had been lost or stolen.
8. As a result of Respondent's refusal or failure to timely and properly report to the Department the change in his FAP group composition due to his incarceration, he received an over issuance of FAP benefits in the amount of \$ [REDACTED] during the period July 1, 2011 through December 31, 2011. (Department Exhibit 3, pp. 32-33)
9. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to report all changes in circumstances, including his incarceration, to the Department within ten days of the occurrence, as required by agency policy.
10. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with his reporting responsibilities.
11. This was the first determined IPV committed by Respondent.
12. A notice of disqualification hearing was mailed to Respondent at his last known address and was not returned by the United States Postal Service as undeliverable.

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 overissuance of FAP benefits, claiming that the overissuance was a result of an IPV committed by Respondent. Further, the Department asked that Respondent be disqualified from the FAP for a period of one year.

Generally, a client is responsible for reporting any change in circumstances that may affect FAP eligibility or benefit level, including a change in group composition, within ten days of the change. BAM 105, p 7.; BEM 220, p 1.

When a client or group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1. A suspected IPV is defined as an overissuance 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 overissuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the overissuance 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 overissuance

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 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 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, during the August 8, 2013 disqualification hearing, the OIG provided credible and sufficient and undisputed testimony and other evidence establishing that, on February 24, 2011, Respondent signed an assistance application (DHS-1171). In doing so, 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 had been incarcerated in Clinton County Jail on April 28, 2011 with no scheduled release date, which incarceration Respondent failed to timely and properly report to the Department. The OIG further established that, during the period April 28, 2011 through December 22, 2011, while Respondent remained incarcerated, the Michigan Bridge card issued to Respondent was used in the state of Michigan. The OIG further established that at no time during the period April 28, 2011 through December 22, 2011, while Respondent remained incarcerated, did Respondent report that his Michigan Bridge Card had been lost or stolen. The OIG further established that, as a result of Respondent's refusal or failure to timely and properly report to the Department the change in his FAP group composition due to his incarceration, he received an over issuance of FAP benefits in the amount of \$1,200.00 during the period July 1, 2011 through December 31, 2011.

In response to the OIG's case presentation, Respondent testified that he was unable to report to the Department his April 28, 2011 incarceration because he had no way of contacting his case specialist from the jail. Respondent further testified he does not know who used his Michigan Bridge Card during his incarceration however Respondent acknowledged that he did not report that his card had been lost or stolen.

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, based on the competent, material, and substantial evidence presented during the August 7, 2013 hearing, Respondent was, or should have been, fully aware of his responsibility to timely report his incarceration to the Department. This Administrative Law Judge further finds unreasonable Respondent's testimony that he had no ability to contact the Department while incarcerated when such contact could have occurred via telephone call, mail, or by having a third party contact the Department on his behalf. Indeed, that Respondent was able to participate in this administrative hearing by telephone from a state correctional facility through the use of a staff member's office is indicative of Respondent's likely access to a telephone at the Clinton County Jail. Accordingly, this 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 \$ [REDACTED] during the period July 1, 2011 through December 31, 2011. 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, this Administrative Law Judge decides that Respondent committed an intentional program violation.

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

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:

[REDACTED]