

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

IN THE MATTER OF:

[REDACTED]

Registration No: 20132616
Issue No: 3055
Case No: [REDACTED]
Hearing Date: February 7, 2013
Clare 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 originally scheduled for November 29, 2012 was rescheduled at Respondent's request and held on February 7, 2013. Respondent appeared and provided testimony. Respondent's appearance was via three-way conference call from the offices of Respondent's authorized representative, [REDACTED], who appeared on Respondent's behalf. 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 ten years.
2. On September 11, 2009, Respondent signed an assistance application (DHS-1171) and, in doing so, certified with his signature, under penalty of perjury, that all the information he has written on the form or told his DHS specialist was true. Respondent further certified with his signature that he

received a copy, reviewed and agreed with the sections in the assistance application Information Booklet explaining how to apply for and receive help: Programs, Things You Must Do, Important Things to Know, Repay Agreements, Information About Your Household That Will Be Shared. 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 A, pp. 1-14)

3. On August 25, 2010, Respondent signed a mid-certification contact notice (DHS-2240-A) and, in doing so, certified with his signature his understanding of the rules of the FAP program, including but not limited to his obligation not to give false information, or hide information to get or to continue to get food assistance benefits. Respondent further certified with his signature his understanding that he will owe the value of any extra FAP benefits he receives if he does not fully report changes to his household circumstances. (Department Exhibit B, pp. 1-3)
4. On September 8, 2011, Respondent signed a redetermination (DHS-1010) and, in doing so, Respondent certified with his signature, under penalty of perjury, that the redetermination 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 and reviewed the sections in DHS Publication 1010, Important Things About Programs & Services. Respondent further certified with his signature that all the information he has written on the form or told his DHS specialist was true. 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 C, pp. 1-4)
5. In his September 8, 2011 redetermination (DHS-1010), Respondent reported no change in his residency and indicated that he continued to reside at [REDACTED]. Nor did Respondent report his need to use his Michigan Bridge card in Florida, or that his Michigan Bridge card had been lost or stolen. (Department Exhibit C, pp. 1-4)
6. During the period February 6, 2011 through January 3, 2012, Respondent used his Michigan Bridge card exclusively in the state of Florida, with the exception of one usage in Michigan on October 25, 2011. (Department Exhibit D, pp. 1-4)

7. 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 March 1, 2011 through December 31, 2011. (Department Exhibit E, pp. 1-2)
8. On August 6, 2012, the Department obtained verification that Respondent received concurrent FAP benefits from both the state of Florida and the state of Michigan for the month of November 2011. (Department Exhibit F, pp. 1-4)¹
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 change of residency, to the Department within ten days of the occurrence, as required by agency policy. (Department Exhibit A, pp. 1-14; Department Exhibit B, pp. 1-3; Department Exhibit C, pp. 1-4)
10. At the time that Respondent signed an assistance application (DHS-1171), a mid-certification contact notice (DHS-2240-A), and a redetermination (DHS-1010) on September 11, 2009, August 25, 2010, and September 8, 2011, respectively, there was no known apparent physical or mental impairment present that limited Respondent's ability to understand and comply with his reporting responsibilities. (Department Exhibit A, pp. 1-14; Department Exhibit B, pp. 1-3; Department Exhibit C, pp. 1-4)
11. During the February 7, 2013 disqualification hearing, Respondent submitted the following three exhibits: (i) copy of a driver's license issued to Respondent by the State of Florida on February 4, 2012; (ii) a copy of a [REDACTED] student identity card issued to Respondent on September 10, 2010 and expiring on September 10, 2011; and (iii) a copy of a Florida Access food benefits card issued to Respondent in April 2012. (Respondent Exhibits 1, 2, and 3)

¹ While Respondent's authorized representative objected to the admission of Department Exhibit F on grounds that it constitutes hearsay and contains testimonial evidence requiring examination of the Florida DHS employee who prepared the document, this Administrative Law Judge has reviewed both the Michigan Rules of Evidence and the Michigan Administrative Procedures Act (MAPA) and finds that Department Exhibit F is admissible pursuant to MRE 803(6) Records of Regularly Conducted Activity inasmuch as the OIG, in the course of conducting their business, needs to rely upon the records of the Florida DHS, and those of other states' Human Services departments, to make their determinations. This Administrative Law Judge further finds that it would be an onerous burden to require another state's department employees to be present when their employees have provided that information to the OIG in the regular course of business. Finally, this Administrative Law Judge notes that the admission of Department Exhibit F is likewise supported by Section 75 of the MAPA which provides in relevant part that, "[i]n a contested case the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." MCL 24.275.

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 ten years.

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.

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, at the February 7, 2013 disqualification hearing, the OIG provided credible and sufficient testimony and other evidence establishing that on September 11, 2009, Respondent signed an assistance application (DHS-1171) and, in doing so, certified with his signature, under penalty of perjury, that all the information he has written on the form or told his DHS specialist was true. Respondent further certified with his signature

that he received a copy, reviewed and agreed with the sections in the assistance application Information Booklet explaining how to apply for and receive help: Programs, Things You Must Do, Important Things to Know, Repay Agreements, Information About Your Household That Will Be Shared. 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 A, pp. 1-14)

The OIG further established that on August 25, 2010, Respondent signed a mid-certification contact notice (DHS-2240-A) and, in doing so, certified with his signature his understanding of the rules of the FAP program, including but not limited to his obligation not to give false information, or hide information to get or to continue to get food assistance benefits. Respondent further certified with his signature his understanding that he will owe the value of any extra FAP benefits he receives if he does not fully report changes to his household circumstances. (Department Exhibit B, pp. 1-3)

The OIG further established that, on September 8, 2011, Respondent signed a redetermination (DHS-1010) and, in doing so, Respondent certified with his signature, under penalty of perjury, that the redetermination 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 and reviewed the sections in DHS Publication 1010, Important Things About Programs & Services. Respondent further certified with his signature that all the information he has written on the form or told his DHS specialist was true. 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 C, pp. 1-4)

The OIG further established that, in his September 8, 2011 redetermination (DHS-1010), Respondent reported no change in his residency and indicated that he continued to reside at 6120 S. Clare Avenue, Clare, Michigan. Nor did Respondent report his need to use his Michigan Bridge card in Florida, or that his Michigan Bridge card had been lost or stolen. (Department Exhibit C, pp. 1-4) The OIG further established that, during the period February 6, 2011 through January 3, 2012, Respondent used his Michigan Bridge card exclusively in the state of Florida, with the exception of one usage in Michigan on October 25, 2011. (Department Exhibit D, pp. 1-4) The OIG further established that Respondent received concurrent FAP benefits from both the state of Florida and the state of Michigan for the month of November 2011. (Department Exhibit F, pp. 1-4) The OIG further 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 \$ [REDACTED] during the period March 1, 2011 through December 31, 2011. (Department Exhibit E, pp. 1-2)

Also at the February 7, 2013 disqualification hearing, Respondent testified that he did spend time in Florida in 2011, often for more than 30 days at a time, in order to visit his parents, who spend the winters in Florida and return to Michigan in April. Respondent further testified that while he was likely in Florida during the months of March, April, and May 2011, he could not recall what his purpose was for being there in April and May 2011 since his parents had already returned to Michigan. Respondent further testified that he resided in Michigan during the months of June 2011 through November 2011, with the exception of weekends or other short visits to Florida during that time. Respondent further testified that despite the amount of time he spent in Florida in 2011, he did not consider himself to have moved to Florida. Respondent further testified that he had reported to his DHS caseworker the fact that he went back and forth between Michigan and Florida in 2011. Respondent further testified that he was never made aware by the Department of his obligation to report a change in his circumstances and address when he left the state of Michigan for more than 30 days. Respondent further testified that he did not begin receiving food assistance from the state of Florida until April 2012 and, in support of his testimony, Respondent submitted a copy of a Florida Access food benefits card issued to Respondent in April 2012. (Respondent Exhibit 3)

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). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and this Administrative Law Judge finds Respondent's testimony that he resided in Michigan during the months of June 2011 through November 2011 to be unconvincing and unreasonable given that his EBT Bridge Card History Report indicates that Respondent used his Michigan Bridge Card only in Florida from June 14, 2011 through November 30, 2011, except for one instance on October 25, 2011 when Respondent made a purchase in Michigan – and Respondent offered no documentary evidence to contradict this EBT Bridge Card History Report. This Administrative Law Judge further finds Respondent's testimony that he had kept his DHS caseworker apprised of his extended travel to and from Florida in 2011 to be unconvincing and unreasonable given that no documentation from either Respondent or the OIG was submitted to support that the department was aware of Claimant's extended travel and had approved of it, and given that Claimant's September 8, 2011 redetermination was silent on this issue, despite there being an opportunity on that form for both Respondent and the specialist to comment on any additional changes. This Administrative Law Judge further finds Respondent's testimony that he was never made

aware by the Department of his obligation to report a change in his circumstances and address when he left the state of Michigan for more than 30 days to be unconvincing and unreasonable given that Respondent certified with his signature in both his September 11, 2009 assistance application and his September 8, 2011 redetermination that he received a copy and reviewed the sections in DHS Publication 1010, Important Things About Programs & Services. This publication clearly advises the applicant of the obligation to report changes in circumstances, including an address change, within 10 days of the change and that the intentional withholding or misrepresentation of information potentially affecting his eligibility or benefit level could result in criminal, civil, or administrative action.² Finally, this Administrative Law Judge finds Respondent's testimony that he did not receive food assistance from the state of Florida during the month of November 2011 to be unconvincing and unreasonable in light of the evidence provided by the state of Florida establishing Respondent's approval for food assistance in both November 2011 and April 2012, the latter of which is not disputed by Respondent.

Consequently, based on the testimony and evidence presented by both the OIG and Respondent, 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 \$ [REDACTED] during the period March 1, 2011 through December 31, 2011. Further, because the OIG established Respondent's concurrent receipt of benefits (i.e., receipt of benefits in more than one State at the same time), the ten-year disqualification period is appropriate.

² DHS Publication 1010, Important Things About Programs & Services, may be found at http://www.michigan.gov/documents/dhs/DHS-PUB-1010_243538_7.pdf.

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 a change in state residency.

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 \$ [REDACTED] and
- Respondent is personally disqualified from participation in the FAP for ten years. 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: February 19, 2013

Date Mailed: February 19, 2013

NOTICE: 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 60 days of the filing of the original request.

Respondent may appeal this Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Respondent may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - Misapplication of manual policy or law in the hearing decision,
 - Typographical errors, mathematical errors, or other obvious errors in the hearing decision that affect the substantial rights of Claimant;
 - The failure of the ALJ to address other relevant issues in the hearing decision.

20132616/SDS

Request must be submitted through the local DHS office or directly to MAHS by mail at:

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

SDS/cr

cc:

