

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201338112
Issue No: 3055
Case No: [REDACTED]
Hearing Date: May 16, 2013
Monroe 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 16, 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 an IPV in the FAP program. The agency further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year.
2. On February 10, 2012, Respondent signed an assistance application (DHS-1171) and reported therein that her household included her son, [REDACTED]. Respondent also indicated that her son's date of birth was [REDACTED] and that her son's father is [REDACTED]. In signing the application, Respondent certified with her electronic signature, under

penalty of perjury, that the application had been examined by or read to her and, to the best of her knowledge, the facts were true and complete. Respondent further certified with her signature that she 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 her signature that she understood she could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if she intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause her to receive assistance she should not have received. (Department Exhibit 3, pp. 26-49; Department Exhibit 1, pp. 5-22)

3. The Department obtained verification that, on February 8, 2012, the 38th Circuit Court Friend of the Court recommended that Respondent and [REDACTED] have joint legal custody of a [REDACTED]-year-old child, with physical custody assigned to Mr. [REDACTED], and with Respondent having the child every Tuesday and Thursday from 5:00 p.m. to 7:30 p.m. and every Saturday from 10:00 a.m. to 6:00 p.m. (Department Exhibit 2, p. 23)
4. The Department provided no verification that the February 8, 2012 recommendation by the 38th Circuit Court Friend of the Court was ever adopted by the Monroe County Circuit Court. Instead, the Department submitted an unsigned, undated Order Adopting Friend of the Court Recommendation granting Respondent "parenting time with the minor child, [REDACTED], d/o/b [REDACTED], every Tuesday and Thursday from noon until 5:00 p.m. and every Saturday from 10:00 a.m. until 6:00 p.m." (Department Exhibit 2, pp. 24-25)

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) 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. Department policies for the FAP program are found in the Department of Human Services Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

In the present matter, the Department requested a hearing to establish an overissuance of FAP benefits, claiming that the overissuance was the 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.

In general, persons who live together and purchase and prepare food together are members of the same FAP eligibility determination group. BEM 212, p 5. A client is

responsible for reporting any change in circumstances that may affect eligibility or benefit level, including changes in group composition with respect to members who purchase and prepare food together and changes in income amount, within ten days of the change. BAM 105, p 7. With respect to earned income, a client must report any of the following: starting or stopping employment; changing employers; change in rate of pay; and a change in work hours of more than five hours per week that is expected to continue for more than one month. 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 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 May 16, 2013 disqualification hearing, the OIG provided credible and sufficient testimony and other evidence establishing that, on February 10, 2012, Respondent signed an assistance application (DHS-1171) and reported therein that her household included her son, [REDACTED]. Respondent also indicated that her son's date of birth was [REDACTED] and that her son's father is [REDACTED]. In signing the application, Respondent certified with her electronic signature, under penalty of perjury, that the application had been examined by or read to her and, to the best of her knowledge, the facts were true and complete. Respondent further certified with her signature that she 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 her signature that she understood she could be prosecuted for perjury and for fraud and/or be required to repay the amount wrongfully received if she intentionally gave false or misleading information, misrepresented, hid or withheld facts that may cause her to receive assistance she should not have received.

The OIG further established that on February 8, 2012, the 38th Circuit Court Friend of the Court recommended that Respondent and ██████ have joint legal custody of a ██████-year-old child, with physical custody assigned to Mr. ██████, and with Respondent having the child every Tuesday and Thursday from 5:00 p.m. to 7:30 p.m. and every Saturday from 10:00 a.m. to 6:00 p.m. However, the Department provided no verification that the February 8, 2012 recommendation by the 38th Circuit Court Friend of the Court was ever adopted by the Monroe County Circuit Court. Instead, the Department submitted an unsigned, undated Order Adopting Friend of the Court Recommendation granting Respondent “parenting time with the minor child, ██████, d/o/b ██████, every Tuesday and Thursday from noon until 5:00 p.m. and every Saturday from 10:00 a.m. until 6:00 p.m.”

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).

Based on the testimony and evidence presented by the OIG, this Administrative Law Judge finds that the OIG has not established, under the clear and convincing standard, that there was a change in Respondent's FAP group composition that Respondent failed to timely and properly report to the Department and, therefore, it cannot be said that Respondent committed an intentional program violation with respect to the FAP program.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that the OIG has not established, under the clear and convincing standard, that there was a change in Respondent's FAP group composition that Respondent failed to timely and properly report to the Department and, therefore, it cannot be said that Respondent committed an intentional program violation with respect to the FAP program.

It is therefore **ORDERED** that the department's determination that Respondent committed an intentional program violation with respect to the FAP program is **REVERSED**.

/s/_____

Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 17, 2013

Date Mailed: May 20, 2013

NOTICE: The Department may appeal this decision and order to the circuit court for the county in which the Department's principal place of business is located within 30 days of receipt of this decision and order.

SDS/aca

cc:

