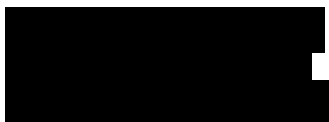


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201339164
Issue No: 3055
Case No: [REDACTED]
Hearing Date: May 8, 2013
DHS MI-CAP SSPC

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received by the Department of Human Services (department) on April 5, 2013. After due notice, a telephone hearing was held on May 8, 2013. Claimant appeared by conference call and provided testimony. Claimant's son, [REDACTED], also appeared by conference call and provided testimony and translation assistance on Claimant's behalf. The department was represented by [REDACTED], an eligibility specialist with the department's MiCAP SSPC office.

ISSUE

Whether the department properly determined Claimant's eligibility for Michigan Combined Application Project (MiCAP) Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. On January 9, 2013, Claimant signed a Disqualification Consent Agreement and an Intentional Program Violation Repayment Agreement. In signing these documents, Claimant acknowledged his understanding that the department had determined he had received an overpayment of FAP benefits in the amount of \$579.17 and that Claimant agreed to pay back the FAP benefits. Claimant further acknowledged his understanding that he would be disqualified from the FAP program and receiving FAP benefits for a one year period. At the time that Claimant signed these documents, an agent with the Office of Inspector General explained the documents to Claimant and Claimant's son and Claimant's son translated the information for Claimant.

Also, the documents included language in Arabic advising Claimant that he must contact his local DHS office if he did not understand the documents. (Department Exhibit D)

2. On March 18, 2013, Claimant applied for MiCAP FAP benefits. (Department Exhibit A)
3. On March 28, 2013, the department mailed Claimant a Notice of Case Action (DHS-1605) advising him that his application for MiCAP FAP benefits had been denied for the reason that he is disqualified from the FAP program from March 1, 2013 through February 28, 2014 pursuant to intentional program violation. (Department Exhibits B, C)
4. On April 1, 2013, Claimant requested a hearing protesting the department's denial of Claimant's application for MiCAP FAP benefits. (Hearing Request)

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

The Food Assistance Program (FAP) was established pursuant to 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 Mich Admin Code 400.30001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Michigan Combined Application Project (MiCAP) is a Food Assistance demonstration project approved by the Food and Nutrition Service (FNS). MiCAP is a series of waivers that allows DHS to issue FAP benefits to Supplemental Security Income (SSI) individuals who qualify for this program. BEM 618. Food Assistance benefits continue for the duration of the benefit period unless an individual is no longer eligible for MiCAP. BEM 618.

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 over issuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the over issuance 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 over issuance 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 over issuances 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, on March 28, 2013, the department denied Claimant's March 18, 2013 application for MiCAP FAP benefits for the reason that he is disqualified from the FAP program from March 1, 2013 through February 28, 2014 pursuant to an intentional program violation.

At the May 8, 2013 hearing, Claimant's son, [REDACTED], testified on Claimant's behalf and indicated that, due to their limited understanding of English, neither he nor his father clearly understood the consequences of Claimant signing the Disqualification Consent Agreement and an Intentional Program Violation Repayment Agreement on January 9, 2013. However, the department representative testified and presented documentary evidence establishing that an agent with the Office of Inspector General carefully explained the agreements to [REDACTED], who then explained the agreements to Claimant without any indication at the time that he himself did not understand the agreements or the OIG agent's explanation of them.

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 May 8, 2013 hearing, the department acted in accordance with policy in denying Claimant's application for MiCAP FAP benefits for the reason that he is disqualified from the FAP program from March 1, 2013 through February 28, 2014 pursuant to an intentional program violation.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department acted in accordance with policy in denying Claimant's application for MiCAP FAP benefits for the reason that he is disqualified from the FAP program from March 1, 2013 through February 28, 2014 pursuant to an intentional program violation. Accordingly, the department's action in this regard is **UPHELD**.

IT IS SO ORDERED.

/s/

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

Date Signed: May 9, 2013

Date Mailed: May 10, 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.

The Claimant 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.

Claimant 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.

201339164/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/aca

cc:

