

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201345040
Issue No: 3055
Case No: [REDACTED]
Hearing Date: August 8, 2013
Washtenaw 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 failed to appear. The hearing was held in Respondent's absence in accordance with Bridges Administrative Manual (BAM) 720, pp 9-10, and Section 72 of the Michigan Administrative Procedures Act, MCL 24.271 *et al.* 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 the State Emergency Relief (SER) program and whether Respondent received an over issuance of FAP and SER 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 and SER benefits received as a result of a determination that Respondent committed an IPV. The agency further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year.
2. On December 18, 2008, Respondent completed an assistance application (DHS-1171) and indicated therein that his household included himself and his two daughters, [REDACTED] and [REDACTED]. In signing the application, 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. 13-20)

3. On November 20, 2009, October 28, 2010, and October 21, 2011, respectively, Respondent completed three redeterminations (DHS-1010), wherein Respondent again indicated that his household included himself and his two daughters, [REDACTED] and [REDACTED]. In signing the redeterminations, Respondent certified with his signature, under penalty of perjury, that the redeterminations 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 had written on the form or told to 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 2, pp. 21-24; Department Exhibit 3, pp. 25-28; Department Exhibit 4, pp. 29-32)
4. On October 5, 2009, November 30, 2010, March 30, 2011, May 26, 2011, June 29, 2011, November 28, 2011, respectively, Claimant completed six assistance applications for SER assistance (DHS-1514) and, in doing so, indicated that his household included himself and his two daughters, [REDACTED] and [REDACTED]. In signing the applications, 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. (Department Exhibit 5, pp. 33-37; Department Exhibit 6, pp. 38-42; Department Exhibit 7, pp. 43-47; Department Exhibit 8, pp. 48-53; Department Exhibit 9, pp. 54-59; Department Exhibit 10, pp. 60-65)
5. In support of his June 29, 2011 SER application, Respondent included a DTE Energy bill in [REDACTED] name. (Department Exhibit 9, p. 59)

6. In support of his November 28, 2011 SER application, Respondent included a YCUA Consumer Shutoff Notice in Respondent's and [REDACTED] name. (Department Exhibit 10, p. 65)
7. On December 10, 2010, the Department received a Shelter Verification (DHS-3688) form from Respondent indicating that [REDACTED] is the landlord of Respondent's home. (Department Exhibit 11, p. 66)
8. On September 5, 2012, the Department obtained a Washtenaw County Parcel Summary identifying Respondent and [REDACTED] as the taxpayers for the principal residence located at [REDACTED] (Department Exhibit 12, pp. 67-68)
9. A Lexis Nexis record report indicates that Respondent and [REDACTED] have resided at [REDACTED] since September 2006. (Department Exhibit 13, pp. 69-86; Department Exhibit 14, pp. 87-104)
10. On September 5, 2012, the Department obtained verification from the Secretary of State that Respondent and [REDACTED] [REDACTED] have both reported their address as [REDACTED] (Department Exhibit 15, p. 105; Department Exhibit 16, p. 106)
11. On September 5, 2012, the Department obtained verification of [REDACTED] employment earnings from her employment with the University of Michigan from 2007 through the second quarter of 2012, which employment Respondent failed to timely and accurately report to the Department. (Department Exhibit 17, pp. 107-109)
12. On March 19, 2013, the Department obtained verification of [REDACTED] employment earnings from her employment with McDonald's Corporation from September 18, 2007 through January 8, 2013, which employment Respondent failed to timely and accurately report to the Department. (Department Exhibit 18, pp. 110-114)
13. As a result of Respondent's failure to timely and accurately report to the Department that [REDACTED] [REDACTED] was a member of his household and that both [REDACTED] [REDACTED] and [REDACTED] [REDACTED] received earned income, Respondent received an over issuance of FAP benefits in the amount of \$ [REDACTED] for the time period December 1, 2008 through May 31, 2012,¹

¹ While the Department's OIG maintains that Respondent received an over issuance of FAP benefits in the amount of \$18,834.00 for the time period December 1, 2008 through May 31, 2012, the Department's OIG failed to include an over issuance budget for the months of January 2011 and November 2011 in the over issuance budget documents submitted by the Department's OIG and set forth in Department Exhibit 20.

and an over issuance of SER benefits in the amount of \$ [REDACTED] for the time periods of November 5, 2009 through November 3, 2009, December 1, 2010 through December 30, 2010, April 7, 2011 through May 6, 2011, May 27, 2011 through June 25, 2011, June 29, 2011 through July 28, 2011, and November 28, 2011 through December 27, 2011, for a total over issuance amount of \$ [REDACTED] (Department Exhibit 19, pp. 115-123; Department Exhibit 20, pp. 124-182)

14. Respondent was clearly instructed and fully aware, or should have been fully aware, of his responsibility to truthfully, timely and accurately report his household's membership and earned income to the Department within ten days of the occurrence, as required by agency policy.
15. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with his reporting responsibilities.
16. This was the first determined IPV committed by Respondent.
17. 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. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The State Emergency Relief (SER) program was established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department policies are found in the State Emergency Relief Manual (ERM).

In the present matter, the Department requested a hearing to establish an over issuance of FAP and SER benefits, claiming that the over issuance 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.

Generally, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level, including a change 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. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments.

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, 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 August 8, 2013 disqualification hearing, the OIG provided credible and sufficient testimony and other evidence establishing that on December 18, 2008, Respondent completed an assistance application (DHS-1171) and indicated therein that his household included himself and his two daughters, [REDACTED], [REDACTED], and [REDACTED]. In signing the application, 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, on November 20, 2009, October 28, 2010, and October 21, 2011, respectively, Respondent completed three redeterminations (DHS-1010), wherein Respondent again indicated that his household included himself and his two daughters, [REDACTED], [REDACTED] and [REDACTED]. In signing the redeterminations, Respondent [REDACTED] with his signature, under penalty of perjury, that the redeterminations 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 had written on the form or told to 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.

The OIG further established that, on October 5, 2009, November 30, 2010, March 30, 2011, May 26, 2011, June 29, 2011, November 28, 2011, respectively, Claimant completed six assistance applications for SER assistance (DHS-1514) and, in doing so, indicated that his household included himself and his two daughters, [REDACTED], [REDACTED] and [REDACTED]. In signing the applications, 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.

The OIG further established that Respondent included a DTE Energy bill in [REDACTED] name in support of his June 29, 2011 SER application, and he included a YCUA Consumer Shutoff Notice in Respondent's and [REDACTED] name, in support of his November 28, 2011 SER application. The OIG further established that Respondent represented that [REDACTED] is the landlord of Respondent's home when in fact both Respondent and [REDACTED] are identified in a Washtenaw County Parcel Summary as the taxpayers for the principal residence located at [REDACTED]. The OIG further established through a LexisNexis record report that Respondent and [REDACTED] have resided at [REDACTED] since September 2006 and that, according to the Secretary of State, Respondent and [REDACTED] have both reported their address as [REDACTED].

The OIG further established that [REDACTED] has been employed with the University of Michigan from 2007 through at least the second quarter of 2012, which employment Respondent failed to timely and accurately report to the Department. The OIG further established that [REDACTED] was employed with [REDACTED].

██████████ from September 18, 2007 through January 8, 2013, which which employment Respondent failed to timely and accurately report to the Department.

Finally, the OIG established that, as a result of Respondent's failure to timely and accurately report to the Department that ██████████ ██████████ was a member of his household and that both ██████████ ██████████ and ██████████ ██████████ received earned income, Respondent received an over issuance of FAP benefits in the amount of \$ ██████████ for the time period December 1, 2008 through May 31, 2012, and an over issuance of SER benefits in the amount of \$ ██████████ for the time periods of November 5, 2009 through November 3, 2009, December 1, 2010 through December 30, 2010, April 7, 2011 through May 6, 2011, May 27, 2011 through June 25, 2011, June 29, 2011 through July 28, 2011, and November 28, 2011 through December 27, 2011, for a total over issuance amount of \$ ██████████.

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).

Consequently, based on the undisputed testimony and evidence presented by the OIG, 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 ██████████ for the time period December 1, 2008 through May 31, 2012, and an over issuance of SER benefits in the amount of \$ ██████████ for the time periods of November 5, 2009 through November 3, 2009, December 1, 2010 through December 30, 2010, April 7, 2011 through May 6, 2011, May 27, 2011 through June 25, 2011, June 29, 2011 through July 28, 2011, and November 28, 2011 through December 27, 2011, for a total over issuance amount of ██████████. Further, because the OIG established that this was Respondent's first IPV, the one-year disqualification period from the FAP program 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 F AP 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 16, 2013

Date Mailed: August 16, 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]