

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

IN THE MATTER OF:



Registration No: 201346251
Issue No: 3055
Case No: [REDACTED]
Hearing Date: August 8, 2013
Washtenaw County DHS

Administrative Law Judge: Suzanne D. Sonneborn

HEARING DECISION AND ORDER

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 Jennifer Allen, an agent with the Department's Office of Inspector General (OIG).

At the outset of the hearing, the Department requested that a summary default judgment be entered against Respondent based on Respondent's failure to appear. However, neither the Michigan Administrative Procedures Act, nor the Michigan Administrative Code, nor the Department of Human Services Bridges Administrative Manual grants an administrative law judge the authority to impose a default judgment against a party for a failure to appear. Accordingly, the Department's request for a summary default judgment against Respondent is denied.

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.

2. Respondent was a recipient of FAP benefits at all times relevant to this hearing. (Department Exhibit 1, pp. 17-32; Department Exhibit 2, pp. 33-34)
3. During the period May 12, 2006 through March 8, 2013, Respondent reported on 23 different occasions, including on December 24, 2012, February 15, 2013, February 25, 2013, and March 8, 2013, that her Michigan Bridge card had been lost, which excessive reporting history is indicative of Respondent having fraudulently used or transferred her Michigan Bridge Card. (Department Exhibit 3, pp. 35-37)
4. On March 29, 2013, officers with the Livingston and Washtenaw Narcotics Enforcement Team (LAWNET) executed a narcotics search warrant at the residence of Vincent Edward Dunlap at 106 N. Summit, Apt 2, Ypsilanti, Michigan 48197, 1918 Thelma Street, SE, during which search the officers seized, among other things, narcotics, money, and a Michigan Bridge Card assigned to Respondent, which card was found in the wallet of [REDACTED] [REDACTED] (Department Exhibit 4, pp. 38-44)
5. During an April 26, 2013 interview with the Department's OIG, [REDACTED] [REDACTED] reported that Respondent had given him her Michigan Bridge Card and PIN in February 2013 and authorized him to use it.
6. At no time during Respondent's receipt of FAP benefits did Respondent share an address or a FAP group with [REDACTED] [REDACTED]
7. As a result of Respondent's transfer of her FAP benefits for cash or consideration other than eligible food, she received an over issuance of FAP benefits in the amount of \$ [REDACTED] for the period February 1, 2013 through March 31, 2013. (Department Exhibit 2, pp. 33-34)
8. This was Respondent's first determined IPV.¹
9. A notice of disqualification hearing was mailed to Respondent at her 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.

¹ While the OIG has asserted that this was Respondent's second determined IPV, the OIG produced no evidence establishing that Respondent had previously been found to have committed a first determined IPV.

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.

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. An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive.

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 there is clear and convincing evidence that the 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.

Clients who commit an IPV are disqualified for a standard qualification period except when a court orders a different period. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720.

A person is disqualified from FAP when an administrative hearing decision, a repayment and disqualification agreement or a court decision determines FAP benefits were trafficked. These FAP trafficking disqualifications are a result of the following actions:

- Fraudulently using, transferring, altering, acquiring, or possessing coupons, authorization cards, or access devices; or

- Redeeming or presenting for payment coupons known to be fraudulently obtained or transferred.

The length of the disqualification period depends on the dollar amount of the FAP benefits trafficked. A person is disqualified for life for a FAP trafficking conviction of \$500 or more. The standard IPV disqualification periods apply to FAP trafficking determinations made by the Michigan Administrative Hearing System or by the client signing a repay agreement. BAM 720, p. 14.

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, sufficient, undisputed testimony and other evidence establishing that, during the period May 12, 2006 through March 8, 2013, Respondent reported on 23 different occasions, including on December 24, 2012, February 15, 2013, February 25, 2013, and March 8, 2013, that her Michigan Bridge card had been lost, which excessive reporting history is indicative of Respondent having fraudulently used or transferred her Michigan Bridge Card. The OIG further established that, on March 29, 2013, officers with the Livingston and Washtenaw Narcotics Enforcement Team (LAWNET) executed a narcotics search warrant at the residence of [REDACTED] at [REDACTED] [REDACTED] during which search the officers seized, among other things, narcotics, money, and a Michigan Bridge Card assigned to Respondent, which card was found in the wallet of [REDACTED]

The OIG further established that, during an April 26, 2013 interview with the Department's OIG, Virgil Dunlap reported that Respondent had given him her Michigan Bridge Card and PIN in February 2013 and authorized him to use it. The OIG further established that, at no time during Respondent's receipt of FAP benefits did Respondent share an address or a FAP group with Virgil Dunlap. Finally, the OIG established that, as a result of Respondent's transfer of her FAP benefits for cash or consideration other than eligible food, she received an over issuance of FAP benefits in the amount of \$ [REDACTED] for the period February 1, 2013 through March 31, 2013.

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 \$ [REDACTED] for the period February 1, 2013

through March 31, 2013. 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 F AP for a period of one year. The disqualification period will begin IMMEDIATELY as of the date of this order.

/s/
Suzanne

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

Department
Date Signed: August 9, 2013

Date Mailed: August 9, 2013

NOTICE: Respondent may appeal this decision and order to the circuit court for the county in which she lives within 30 days of receipt of this decision and order.

SDS/hj

cc:

[REDACTED]