

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 2014-10487
Issue No.: 3001
Case No.: ██████████
Hearing Date: January 9, 2014
County: Wayne (57)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was conducted from Detroit, Michigan on Thursday, January 9, 2014. Claimant appeared and testified. Participating on behalf of Department of Human Services (Department) was ██████████. Participating on behalf of the Office of Inspector General (OIG) was Agent Dustin Drabek.

ISSUE

Whether the Department properly denied Claimant's Food Assistance Program (FAP) benefits application.

FINDINGS OF FACT

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

1. Claimant previously signed repayment and disqualification agreement due to FAP trafficking intentional program violation (IPV).
2. As a result of the FAP IPV, a 12 month FAP sanction was imposed.
3. During the FAP sanction period, Claimant reapplied for FAP benefits.
4. The Department denied Claimant's FAP application due to the FAP sanction.

5. On October 30, 2013, the Department received Claimant's written request for hearing, protesting the FAP denial.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Bridges Reference Tables (RFT).

The Food Assistance Program ("FAP"), formerly known as the Food Stamp program, is established by 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, formerly known as the Family Independence Agency, administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3001 through 400.3015.

IPV is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720.

7 CFR 273.16(c) provides in part that an intentional program violation shall consist of having intentionally:

- (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). (emphasis added)

The Code of Federal Regulations further provides criteria for determining and intentional program violation as:

The hearing authority shall base the determination of intentional Program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional Program violation as defined in paragraph (c) of this section. 7 CFR 273.16(e)(6)

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the over-issuance. BAM 700. When a client receives more benefits than s/he is entitled to, the Department must take reasonable steps to promptly correct any overpayment of public assistance benefits, whether due to

department or client error. BAMs 705, 720 and 725. IPV is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720 A recipient found to have committed a third intentional program violation is disqualified for life. BAM 720.

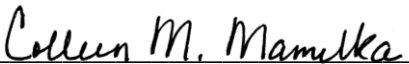
In this case, Claimant previously signed a repayment and disqualification agreement as a result of FAP trafficking. Pursuant to policy, the Department imposed a 12-month FAP sanction. During the sanction period, Claimant applied for FAP benefits. The Department registered and processed the FAP application but due to the sanction, the application was denied. Claimant requested a hearing, seeking to present her case regarding the IPV. During the hearing, it was explained that the only issue was whether the Department acted in accordance with policy when it denied the FAP application as a result of the FAP IPV sanction. In review of the record, the Department established it acted in accordance with policy. The Department's denial is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds the Department established it acted in accordance with department policy when it denied Claimant's FAP application due to the imposition of a 12-month FAP IPV sanction.

Accordingly, it is ORDERED:

The Department's FAP denial is AFFIRMED.


Colleen M. Mamelka
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 17, 2014

Date Mailed: January 17, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

CMM/tm

cc| [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]