

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201338102
Issue No: 3005
Case No: [REDACTED]
Hearing Date: January 30, 2014
Monroe County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a hearing was held on October 30, 2013, at which Respondent failed to appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5). 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. The OIG further requested that Respondent be disqualified from receiving further FAP benefits for a period of ten years.
2. On March 25, 2011, Respondent completed an assistance application (DHS1171) wherein she reported that she was a resident of Michigan. In signing the application, Respondent certified with her 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 2, pp. 23-38; see also Department Exhibit 1, pp. 5-22)

3. On March 1, 2013, the Department obtained verification from the state of Ohio's Department of Children and Family Services that Respondent received food assistance benefits from the state of Ohio from September 2011 through February 2012 while still receiving food assistance benefits from the state of Michigan. (Department Exhibit 3, pp. 39-40; Department Exhibit 4, pp. 41-46)
4. During the period July 17, 2011 through May 26, 2012, Respondent used her Michigan Bridge card exclusively in the states of Georgia, Kentucky, and Ohio and failed to timely report that she was no longer a Michigan resident during this period of time. (Department Exhibit 5, pp. 47-50)
5. As a result of Respondent's failure to properly report that she was no longer a Michigan resident and had begun to receive food assistance benefits from another state, she received an over issuance of FAP benefits in the amount of \$ [REDACTED] during the period August 1, 2011 through May 31, 2012. (Department Exhibit 6, pp. 51-52)
6. Respondent was clearly instructed and fully aware, or should have been fully aware, of her responsibility to report all changes in circumstances, including her change of residency, to the Department within ten days of the occurrence, as required by agency policy.
7. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with her reporting responsibilities.
8. This was the first determined IPV committed by Respondent involving the FAP program.
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

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

In the present matter, the Department requested a hearing to establish an over-issuance of FAP benefits, claiming that the over-issuance was a result of an IPV committed by Respondent. Further, the Department asked that Respondent be disqualified from the FAP for a period of ten years.

To be eligible for FAP benefits, a person must be a Michigan resident. For FAP purposes, a person is considered to be a Michigan resident if he is living in the State, except for vacationing, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p 1. Generally, a client is responsible for reporting any change in circumstances, including a change in residency, that may affect eligibility or benefit level 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 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.

To determine the first month of the OI period, Bridges allows time for:

- The client reporting period, per BAM 105. (BAM 105 provides that changes must be reported within 10 days of receiving the first payment reflecting the change).
- The full standard of promptness (SOP) for change processing, per BAM 220. (BAM 220 requires the Department to act on a FAP change reported by means other than a tape match within 10 days of becoming aware of the change).
- The full negative action suspense period. 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, IPVs 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 January 30, 2014 disqualification hearing, the Department's OIG provided credible, undisputed, and sufficient testimony and other evidence establishing that, on May 25, 2011, Respondent completed an assistance application (DHS1171) wherein she reported that she was a resident of Michigan. In signing the application, Respondent certified with her 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 Respondent began receiving food assistance benefits from the state of Ohio in September 2011, whilst still receiving food assistance benefits from the state of Michigan. Finally, the OIG established that, a result of Respondent's failure to properly report that she was no longer a Michigan resident and had begun to receive food assistance benefits from another state, she received an over issuance of FAP benefits in the amount of \$2,830.00 during the period August 1, 2011 through May 31, 2012.

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).

Respondent did not attend the hearing and, consequently, the OIG's testimony and evidence was undisputed.

Respondent was, or should have been, fully aware of her responsibility to timely report her change of residence. Moreover, Respondent's signature on her assistance application established that she was, or should have been, fully aware that the intentional withholding or misrepresentation of information potentially affecting her eligibility or benefit level could result in criminal, civil, or administrative action. Finally, there was no evidence presented indicating that Respondent suffered from any physical or mental impairment that limited her ability to understand and fulfill her reporting responsibilities. See BEM 720, p 1.

Based on the credible and undisputed testimony and other evidence presented by the OIG, the 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 F AP benefits in the amount of \$ [REDACTED] during the period August 1, 2011 through May 31, 2012. Further, because the OIG established Respondent's concurrent receipt of benefits (i.e., receipt of benefits in more than one State at the same time), the ten-year disqualification period is appropriate.

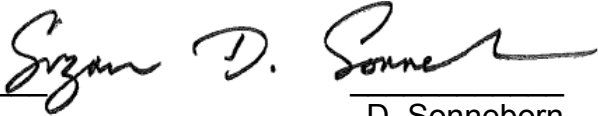
DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that Respondent committed an intentional program violation by refusing or failing to report a change in state residency.

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 ten years. The disqualification period will begin to run IMMEDIATELY as of the date of this order.

Suzanne



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

Department
Date Signed: January 31, 2014

Date Mailed: February 3, 2014

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 she lives.

SDS/hj

cc:

