

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201344137
Issue No: 3005
Case No: [REDACTED]
Hearing Date: January 30, 2014
Wayne County DHS #18

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 January 30, 2014 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 lead 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 a first IPV in this program. The agency further requested that Respondent be disqualified from receiving further FAP benefits for a period of one year.
2. The Department's OIG presented no evidence establishing that Respondent completed and signed an assistance application wherein he acknowledged that he received a copy, reviewed, and agreed with the

sections in the assistance application Information Booklet, including the obligation to report changes in one's circumstances within ten days.

3. Respondent was a recipient of FAP benefits from October 1, 2009 through June 30, 2010 and from September 1, 2010 through April 30, 2011. (Department Exhibit 3, pp. 13-16)
4. During the periods October 10, 2009 through June 20, 2010 and September 16, 2010 through March 25, 2011, Respondent used his Michigan Bridge card exclusively in the states of Alabama, Florida, and Georgia for purchases totaling \$ [REDACTED] and failed to timely report that he was no longer a Michigan resident. (Department Exhibit 4, pp. 17-18; Department Exhibit 5, p. 19)
5. Respondent received an over issuance of FAP benefits in the amount of \$ [REDACTED] during the periods October 1, 2009 through June 30, 2010 and September 1, 2010 through April 30, 2011.
6. Subsequent to the scheduling of the hearing and prior to the hearing date, the Notice of Disqualification Hearing and accompanying documents were mailed to Respondent at the last known address and were returned to the Michigan Administrative Hearing System as undeliverable by the United States Postal Service.

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 (FS) 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, R 400.3001 through R 400.3015.

In the present matter, the Department requested a hearing to establish an over issuance of FAP 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.

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.

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 12.

A suspected IPV means an OI exists for which all three of the following conditions exist:

- 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 reporting responsibilities.

BAM 700 (2013), p. 6; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by 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, p. 1 (emphasis in original); see also 7 CF R 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 13.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (2013), p. 2. 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 FAP concurrent receipt of benefits. BAM 720, p. 16.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

In this case, at the January 30, 2014 disqualification hearing, OIG agent Martin O'Sullivan presented no evidence establishing that Respondent completed and signed an assistance application wherein he acknowledged that he received a copy, reviewed, and agreed with the sections in the assistance application Information Booklet, including the obligation to report changes in one's circumstances within ten days, and that he understood his failure to give timely, truthful, complete, and accurate information about his circumstances could result in a civil or criminal action, or an administrative claim, against him.

Instead, Mr. O'Sullivan established that Respondent was a recipient of FAP benefits from October 1, 2009 through June 30, 2010 and from September 1, 2010 through April 30, 2011 – and, according to Mr. O'Sullivan, it is the OIG's position that it is not necessary for the OIG to produce an assistance application signed by Respondent because Respondent's mere receipt of FAP benefits establishes *by implication* that Respondent completed and signed an assistance application acknowledging therein his understanding of his reporting responsibilities. Mr. O'Sullivan further testified that Respondent's exclusive out-of-state usage of his EBT Bridge card, during the periods October 10, 2009 through June 20, 2010 and September 16, 2010 through March 25, 2011, established that he changed his residency, which change Respondent failed to report to the Department. Mr. O'Sullivan further established that, as a result of Respondent's refusal or failure to properly report that he was no longer a Michigan resident, he received an over issuance of FAP benefits in the amount of \$3,175.00 during the periods October 1, 2009 through June 30, 2010 and September 1, 2010 through April 30, 2011.

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, the evidence establishes that Respondent did indeed change his residency without reporting the change to the Department, resulting in his receipt of an over-issuance of FAP benefits in the amount of \$ [REDACTED] during the periods October 1, 2009 through June 30, 2010 and September 1, 2010 through April 30, 2011, which the Department is entitled to recoup. This Administrative Law Judge further finds, however, that the OIG's attempt to establish by inference or implication that Respondent was clearly and correctly instructed regarding his reporting responsibilities is both unreasonable and unconvincing and falls far short of the clear and convincing standard by which the OIG must prove that Respondent committed an intentional program violation warranting the penalty of disqualification from program benefits. Put another way, because the OIG did not offer any evidence of an application signed by Respondent wherein he acknowledged his obligation to report changes in his circumstances, the OIG has not established, under the clear and convincing standard, that Respondent intentionally gave incomplete or inaccurate information needed to make a correct benefit determination or that Respondent was clearly and correctly instructed regarding his reporting responsibilities or that Respondent intentionally failed to report information. Therefore, it cannot be said that Respondent committed an intentional program violation with respect to the FAP program.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that, while Respondent did indeed receive an over-issuance of FAP benefits in the amount of \$ [REDACTED] during the periods October 1, 2009 through June 30, 2010 and September 1, 2010 through April 30, 2011, which the Department is entitled to recoup, Respondent did not commit an intentional program violation with respect to the FAP program.

It is therefore ORDERED that the department's determination of an intentional program violation with respect to the FAP program is **REVERSED**.

It is further ORDERED that the department's recoupment of overissued FAP benefits in the amount of \$ [REDACTED] is **UPHELD** and the Department shall initiate recoupment procedures for this amount in accordance with Department policy.

Suzanne

Suzanne D. Sonneborn

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

Department

Date Signed: February 6, 2014

Date Mailed: February 6, 2014

NOTICE: Either party may appeal this decision and order to the circuit court for the county in which the Department's principal place of business is located, or the circuit court for the county in which Respondent resides, within 30 days of receipt of this decision and order.

SDS/hj

cc:

[REDACTED]