

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201413331
Issue No: 3005, 5005
Case No: [REDACTED]
Hearing Date: March 5, 2014
Wayne County DHS #55

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 March 5, 2014, 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] [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 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 October 28, 2009, Respondent completed an assistance application (DHS-1171) and indicated therein that she resided at [REDACTED] [REDACTED] [REDACTED] [REDACTED] and that her household included herself and her three children. 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 6, pp. 17-31)

3. On December 16, 2009, the Department received a fraud complaint alleging that Respondent's husband lived in her home and was employed with [REDACTED] (Department Exhibit 1, p. 12)
4. On December 21, 2009, Respondent reported to the Department that she was married, that her husband had been in and out of the home and he was currently in the home. (Department Exhibit 2, p. 13)
5. On April 11, 2011, the Department obtained verification from the Secretary of State that Respondent's husband, Dion Griffin, reported his address for purposes of license and voter registration as [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Department Exhibit 3, p. 14; Department Exhibit 4, p. 15)
6. A deed record for Wayne County indicates that Respondent and Dion Griffin were listed as of April 10, 2009 on the property located at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Department Exhibit 5, p. 16)
7. On October 11, 2010, the Department obtained verification that Respondent's husband, Dion Griffin, was employed with [REDACTED] [REDACTED] [REDACTED] from April 4, 2000 to at least October 11, 2010 and received earnings, including from January 1, 2008 through July 31, 2009. (Department Exhibit 7, pp. 32-46)
8. As a result of Respondent's failure to timely and accurately report to the Department that Dion Griffin was a member of her household and that he received earned income, Respondent received an over issuance of FAP benefits in the amount of \$ [REDACTED] for the time period January 1, 2008 through July 31, 2009, and an over issuance of SER benefits in the amount of \$\$ [REDACTED] for the time periods of January 1, 2008 through January 30, 2008 and June 1, 2009 through June 30, 2009, for a total over issuance amount of \$ [REDACTED] (Department Exhibit 8, pp. 47-52; Department Exhibit 9, pp. 53-54; and Department Exhibit 10, p. 55)

9. Respondent was clearly instructed and fully aware, or should have been fully aware, of her responsibility to truthfully, timely and accurately report her household's membership and earned income to the Department within ten days of the occurrence, as required by agency policy.
10. There was no apparent physical or mental impairment present that limited Respondent's ability to understand and comply with her reporting responsibilities.
11. This was the first determined IPV committed by Respondent.
12. 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. 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 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 over issuance period begins the first month the benefit issuance exceeds the amount allowed by Department policy or six years before the date the over issuance 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 over issuance 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 over issuances 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 March 5, 2014 disqualification hearing, the OIG provided credible, sufficient, and undisputed testimony and other evidence establishing that on October 28, 2009, Respondent completed an assistance application (DHS-1171) and indicated therein that she resided at [REDACTED] [REDACTED] [REDACTED] [REDACTED] and that her household included herself and her three children. 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's husband, [REDACTED] [REDACTED] maintained vehicle and voter registration with the Secretary of State under the address of [REDACTED] [REDACTED]

██████████ and that both Respondent and ██████████ are both listed on the deed for the property located at that address.

The OIG further established that Respondent's husband was employed with Faygo Beverages Inc. from April 4, 2000 to at least October 11, 2010 and received earnings, including from January 1, 2008 through July 31, 2009, which employment Respondent failed to timely and accurately report to the Department. Moreover, the home address that ██████████ had on file with his employer was Respondent's address at ██████████

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 her household and that he received earned income, Respondent received an over issuance of FAP benefits in the amount of \$██████████ for the time period January 1, 2008 through July 31, 2009, and an over issuance of SER benefits in the amount of \$██████████ for the time periods of January 1, 2008 through January 30, 2008 and June 1, 2009 through June 30, 2009, 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 January 1, 2008 through July 31, 2009, and an over issuance of SER benefits in the amount of \$██████████ for the time periods of January 1, 2008 through January 30, 2008 and June 1, 2009 through June 30, 2009, 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.

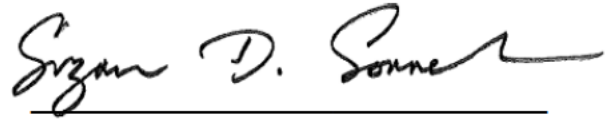
DECISION AND ORDER

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 \$██████████ and

- Respondent is personally disqualified from participation in the FAP for a period of one year. The disqualification period will begin IMMEDIATELY as of the date of this order.



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

Date Signed: March 7, 2014

Date Mailed: March 11, 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 he lives.

SDS/hj

cc:

