

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

IN THE MATTER OF:

[REDACTED]

Registration No: 201413346
Issue No: 3005
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] 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. On March 3, 2008, Respondent's wife, [REDACTED] completed an assistance application (DHS-1171) on behalf of herself, Respondent, and their three children. Therein, Respondent's wife only reported income from unemployment compensation benefits. In signing the application, Respondent's wife certified with her signature, under penalty of perjury, that all the information she had written on the form or told to a specialist was true. Respondent's wife further certified with her signature that she

understood she could be prosecuted 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 1, pp. 10-16)

3. 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. On May 15, 2010, the Department obtained verification that Respondent began employment with Blockbuster Inc. on January 22, 2008 and remained employed there as of May 15, 2010. (Department Exhibit 4, pp. 20-23)
4. Respondent failed to timely and properly report to the Department his husband's employment with [REDACTED] [REDACTED]
5. As a result of Respondent's refusal or failure to properly and timely report his employment with [REDACTED] [REDACTED] Respondent's FAP group received an over issuance of FAP benefits in the amount of \$ [REDACTED] for the time period March 1, 2008 through July 31, 2008. (Department Exhibit 5, p. 24; Department Exhibit 6, pp. 25-35)
6. Subsequent to the scheduling of the hearing and prior to the hearing date, the Notice of Disqualification Hearing and accompanying documents that were mailed to Respondent at the last known address, and which constituted due notice, were not returned to the Michigan Administrative Hearing System (MAHS) by the United States Postal Service as undeliverable.
7. In a Hearing Decision issued on March 12, 2014, the undersigned Administrative Law Judge upheld the Department's determination that Respondent's wife's failure to report Respondent's employment earnings constituted an IPV involving the FAP program, resulting in an over issuance of FAP benefits in the amount of \$ [REDACTED] for the time period March 1, 2008 through July 31, 2008.

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.

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.

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.

Department policy dictates that when correspondence to a Respondent concerning an Intentional Program Violation (IPV) is returned as undeliverable, the hearing cannot proceed except with respect to the Food Assistance Program (FAP). Department of Human Services Bridges Administrative Manual (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 CFR 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 March 5, 2014 disqualification hearing, OIG agent [REDACTED] [REDACTED] 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. [REDACTED] argued that Department policy allows the Department to impute IPV liability against both a client and the client's spouse where the client's failure to report a change in circumstances results in an over issuance to the FAP household group of which the spouse is a member. Mr. [REDACTED] could not identify the specific Department policy to support this proposition. Nor could Mr. [REDACTED] provide any support in policy for the Department's attempt to recoup the same over issuance amount twice against both Respondent and Respondent's wife.

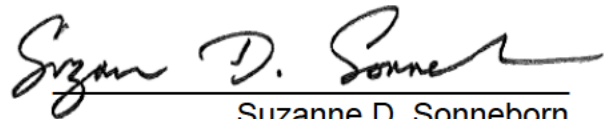
Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally 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 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. This Administrative Law Judge further finds that because an over issuance for the same amount and same time period has already been established against Respondent's wife pursuant to a Hearing Decision issued by the undersigned Administrative Law Judge on March 12, 2014 in the matter of [REDACTED] [REDACTED] [REDACTED] the OIG cannot recoup the same amount twice. Therefore, it cannot be said that Respondent committed an intentional program violation with respect to the FAP program or that Respondent received an over issuance of FAP benefits beyond that which was already established against Respondent's wife.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, this Administrative Law Judge decides that, Respondent did not commit an intentional program violation with respect to the FAP program and Respondent did not receive an over issuance of FAP benefits.

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



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

Date Signed: March 12, 2014

Date Mailed: March 12, 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:

