

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

IN THE MATTER OF:

██████████
██████████████████
██████████

Reg. No.: 14-009499
Issue Nos.: 3008, 6001
Case No.: ██████████
Hearing Date: September 15, 2014
County: Wayne (57-Conner)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 held on September 15, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████ ██████████
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ISSUES

1. Did the Department properly reduce Claimant's Food Assistance Program (FAP) benefits?
2. Did the Department properly close Claimant's Child Development and Care (CDC) case?

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 was an ongoing recipient of FAP and CDC benefits.
2. The Department alleged that in 2011 Claimant committed an intentional program violation (IPV) concerning her FAP benefits and was overissued FAP and CDC benefits.
3. On June 25, 2014, the Department sent Claimant an Intentional Program Violation (IPV) Client Notice that notified her that (i) she was disqualified from receiving FAP benefits for a period of 12 months, from August 1, 2014, to July 31, 2015, and (ii)

after her needs were removed and an administrative recoupment was applied to her FAP case, her monthly FAP benefits would decrease to \$121 effective August 1, 2014.

4. On June 30, 2014, the Department sent Claimant a Notice of Case Action notifying her that her CDC case would close effective July 13, 2014, and she would remain ineligible for CDC benefits from July 13, 2014, through January 10, 2015, because she failed to comply with CDC program rules.
5. On August 7, 2014, Claimant filed a request for hearing disputing the Department's actions concerning her FAP and CDC benefits.

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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

Reduction of FAP Benefits

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

As a preliminary matter, it is noted that Claimant requested a hearing concerning the reduction of her FAP benefits in response to a June 25, 2014, IPV Client Notice, DHS-4357. When a client is advised of the IPV recoupment and/or disqualification action via the DHS-4357 IPV Client Notice and requests a hearing, the hearing is limited to requests challenging the overissuance benefit reduction or the repayment (not overissuance) amount. BAM 720 (May 2014), pp. 18-19. In this case, Claimant attempted to discuss the underlying issue in her IPV case concerning her FAP eligibility based on student status. However, because Claimant's hearing request concerned the IPV Client Notice, the issue at the current hearing was limited to the FAP overissuance benefit reduction.

In the June 25, 2014, IPV Client Notice, the Department notified Claimant that, effective September 1, 2014, her monthly FAP benefits were decreasing to \$121. The Notice explained that Claimant was removed from her FAP group for 12 months, from August 1, 2014, to July 31, 2015, and that she was overissued \$1,167 in FAP benefits for the period between July 2011 and September 2011. The Notice further informed Claimant that, after being removed from the group and having ongoing benefits subject to

administrative recoupment, her FAP group would receive \$121 in monthly FAP benefits effective August 1, 2014, ongoing.

At the hearing, Claimant disputed her removal from her FAP group and the calculation of her FAP benefits. With respect to the issue of Claimant's removal from her FAP group, Department policy provides that an active or inactive FAP benefit recipient is disqualified from future receipt of FAP benefits if the individual (i) is found by a court or hearing decision to have committed an IPV, (ii) has signed a DHS-826 (Request for Waiver of Disqualification Hearing) or DHS-830 (Disqualification Consent Agreement), (iii) is convicted of concurrent receipt of assistance by a court, or (iv) is found by the Michigan Administrative Hearing System to have trafficked FAP benefits. BAM 720, pp. 15-16. Other eligible group members may continue to receive benefits. BAM 720, p. 16. A twelve-month standard disqualification period applies for a first-time IPV occurrence, unless a court orders a different time period. BAM 720, p. 16.

Although the IPV Client Notice explained that the reason for Claimant's FAP changes was "[y]ou agreed to this disqualification and/or repayment by signing an agreement to waive prosecution or an administrative disqualification hearing," the Department did not present any evidence at the hearing that Claimant had been found by a court or in a hearing decision to have committed an IPV or to have trafficked FAP benefits, that she was convicted by a court of concurrent receipt of assistance, or that she had signed a DHS-826 or DHS-830. Furthermore, while Claimant acknowledged that she was aware of the IPV allegations, that a hearing had been scheduled in April 2014, and that she had signed a repayment agreement, she denied signing a waiver of disqualification hearing. In the absence of any evidence establishing the IPV or disqualification, the Department has failed to satisfy its burden of showing that it acted in accordance with Department policy when it disqualified Claimant from her FAP group.

It is further noted that, under Department policy, the IPV Client Notice, DHS-4357, must be sent within 10 days after (i) receipt of an investigation disposition indicating an IPV was determined, (ii) the hearing decision that an IPV occurred or (iii) the signed DHS-826 or DHS-830, with the disqualification beginning the first month after the notice is sent. BAM 720. When a disqualification is not imposed according to this standard of promptness, the Department is required to do as follows:

- Impose the disqualification for any remaining months.
- Recoup the benefits issued for the months the person should have been disqualified as an agency error.
- If the agency error amount is over \$250, notify the client of this overissuance via the DHS-4358A, B, C and D; see BAM 705.

BAM 720, p. 21.

Therefore, to the extent Claimant did sign a DHS-826 or DHS-830 in April 2014, the Department's opportunities to disqualify Claimant from her FAP group and recoup benefits are subject to the above-referenced policy provision.

With respect to the administrative recoupment, the IPV Notice informed Claimant that her monthly FAP benefits were decreasing to \$121 after she was removed as a group member and administrative recoupment was applied. Active programs are subject to administrative recoupment for repayment of overissuances. BAM 725 (July 2014), p. 6. FAP benefits are reduced for recoupment by a percentage of the monthly FAP entitlement, with the entitlement amount being the amount of FAP a group would receive if any IPV-disqualified members were included in the eligible group. BAM 725, p. 7. The standard administrative recoupment percentage for FAP is dependent on the type of overissuance: a 10% standard administrative recoupment percentage applies to agency or client error and a 20% standard administrative recoupment percentage applies to an IPV. BAM 725, p. 7.

A review of the Department's calculation of Claimant's decreased FAP benefits shows that the Department removed Claimant as a disqualified member of her FAP group and applied the 20% standard administrative recoupment percentage applicable to IPV cases. However, as discussed above, the Department has failed to establish that Claimant is subject to a FAP disqualification due to an IPV or the amount of overissued benefits. In the absence of such evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it recalculated Claimant's FAP benefits.

Closure of CDC Case

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

In the June 30, 2014, Notice of Case Action, the Department notified Claimant that her CDC case would close effective July 13, 2014, and she would remain ineligible for CDC benefits for the six months between July 13, 2014, and January 10, 2015, because she had failed to cooperate with the CDC program rules.

In order to be eligible for CDC benefits, clients must comply with the CDC program rules outlined in Mich Admin Code, R 400.5020, which provides as follows:

- (1) Clients shall cooperate with the [D]epartment in determining initial and ongoing eligibility and [CDC]

payment levels. Cooperation includes all of the following:

- (a) Answering completely and truthfully all questions on [D]epartment forms and during interviews.
- (b) Taking all actions within the group's ability to verify factors concerning the group's eligibility.
- (c) Cooperating with the [D]epartment during investigations.
- (d) Accurately reporting to the [D]epartment all changes that affect the amount of [CDC] payment, eligibility, need for care, approved need reason, changes in child care providers, changes in group composition, and changes in the program group's income within 10 calendar days after the information is known to the client.

BEM 708 (April 2014), p. 1.

If a client is in noncooperation, the client's CDC case will close and the client will be ineligible for CDC benefits for six months for the first occurrence, twelve months for the second occurrence, or lifetime for the third. Mich Admin Code, R 400.5020(2) and (3); BEM 708, pp. 1, 2. Rule violations are considered intentional and result in a disqualification if established by a court, an administrative law judge, or the client's signed repay agreement or disqualification form.

At the hearing, the Department was unable to clearly identify the program rule violation that resulted in the CDC case closure. Based on the fact that the June 30, 2014, Notice of Case Action indicates that Claimant was previously notified of the disqualification and the June 25, 2014, IPV Client Notice references an FAP IPV disqualification, it appears that the CDC closure and sanction applied against Claimant concerns the alleged IPV. However, Claimant denied signing any repayment agreement concerning CDC. The Department did not present any evidence establishing that a court or Administrative Law Judge found Claimant's actions concerning her CDC case intentional or that Claimant signed a repay agreement or disqualification form concerning the CDC matter. In the absence of any such evidence, the Department has failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed and sanctioned Claimant's CDC case.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it reduced Claimant's FAP benefits and closed her CDC case.

DECISION AND ORDER

Accordingly, the Department's decision is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the FAP disqualification entered on or about August 1, 2014, from Claimant's record;
2. Issue supplements to Claimant for August 1, 2014, ongoing to bring her monthly FAP allotment to the level she received prior to August 1, 2014;
3. Remove the CDC disqualification entered on or about July 13, 2014, from Claimant's record;
4. Reinstate Claimant's CDC case effective July 13, 2014;
5. Issue supplements to Claimant (or her provider, as appropriate) from July 13, 2014, ongoing for any CDC benefits she was eligible to receive but did not.


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **9/17/2014**

Date Mailed: **9/17/2014**

ACE / pf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]