

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

IN THE MATTER OF:



Registration No: 201411284
Issue No: 1005
Case No: [REDACTED]
Hearing Date: March 5, 2014
Muskegon 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 under signed 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 regulation agent with the department's Office of Inspector General (OIG).

ISSUE

Whether Respondent committed an intentional program violation (IPV) involving the Family Independence Program (FIP) and whether Respondent received an over issuance of FIP 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 FIP 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 FIP benefits for a period of one year.
2. On November 19, 2009, Respondent signed an assistance application (DHS-1171) and reported therein that she was "on strike" from her employment with Fashion Bug. In signing the application, Respondent

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 further certified with her signature that she received and reviewed a copy of the Acknowledgements, 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 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. 10-25)

3. On October 18, 2012, the Department obtained verification that Respondent received earnings from her employment with Fashion Bug from at least January 1, 2010 through December 23, 2010, which employment Respondent failed to properly and timely report to the Department. (Department Exhibit 2, pp. 26-28; Department Exhibit 3, pp. 29-30)
5. As a result of Respondent's refusal or failure to properly and timely report earned income from her employment, she received an over issuance of FIP benefits in the amount of \$ [REDACTED] for the period March 1, 2010 through June 30, 2010. (Department Exhibit 4, pp. 31-31; Department Exhibit 5, pp. 33-40)
6. Respondent was clearly instructed and fully aware, or should have been fully aware, of her responsibility to properly report all changes in circumstances, including her receipt of earned income, 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 FIP IPV committed by Respondent.
9. 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.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. Department policies for both programs are found in the Department of Human Services Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

In the present matter, the Department requested a hearing to establish an overissuance of FIP benefits, claiming that the overissuance was the result of an IPV committed by Respondent. Further, the Department asked that Respondent be disqualified from the FIP and 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.

When a client or group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1. A suspected intentional program violation (IPV) is defined as an overissuance 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, 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 March 5, 2014 disqualification hearing, the OIG's representative, regulation agent James Hall, provided credible, sufficient, undisputed testimony and other evidence establishing that, on November 19, 2009, Respondent signed an assistance application (DHS-1171) and reported therein that she was "on strike" from her employment with Fashion Bug. In signing the application, Respondent 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 further certified with her signature that she received and reviewed a copy of the Acknowledgements, 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 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 was employed at Fashion Bug from at least January 1, 2010 through December 23, 2010, which employment Respondent failed to properly and timely report to the Department. Finally, the OIG established that, a result of Respondent's refusal or failure to properly and timely report earned income from her employment, she received an over-issuance of FIP benefits in the amount of \$1,319.00 for the period March 1, 2010 through June 30, 2010.

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 was, or should have been, fully aware of her responsibility to timely report her receipt of earned income. 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, sufficient, 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 FIP benefits in the amount of \$[REDACTED] for the period March 1, 2010 through June 30, 2010. Further, because this was Respondent's first FIP IPV, the one-year disqualification period from the program is appropriate.

DECISION AND ORDER

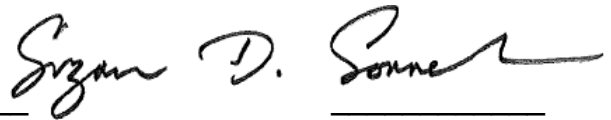
Based on the above findings of fact and conclusions of law, and for the reasons stated on the record, this Administrative Law Judge decides that Respondent committed an intentional program violation involving the FIP program and received an over issuance of FAP benefits in the amount of \$ [REDACTED]

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 FIP for a period of one year. The disqualification period will begin IMMEDIATELY as of the date of this order.

Suzanne

Department



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

Date Signed: March 6, 2014

Date Mailed: March 7, 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:

