

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

IN THE MATTER OF:



Reg. No.: 201426107
Issue No.: 3007
Case No.: [REDACTED]
Hearing Date: March 3, 2014
County: Wayne (98/23)

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 March 3, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Family Independence Specialist.

ISSUE

Did the Department properly disqualify Claimant from her Food Assistance Program (FAP) group and seek recoupment of FAP benefits?

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 is an ongoing recipient of FAP benefits.
2. In a September 5, 2013, hearing, the Department alleged that Claimant committed an intentional program violation (IPV) of the FAP program by trafficking her benefits at the [REDACTED], located at Rosa Parks Blvd in Detroit.
3. In a September 9, 2013, hearing decision and order, the presiding administrative law judge (ALJ) concluded that Claimant had trafficked \$4,692.70 of her FAP benefits between January 5, 2009 and September 12, 2011 and ordered that Claimant (i) reimburse the Department for these ineligibly received benefits and (ii) be disqualified from her FAP group for a period of one year.

4. On September 27, 2013, the Department sent Claimant an Intentional Program Violation Client Notice notifying her, based on the agreement she signed to waive the administrative disqualification hearing, that (i) she was disqualified from her FAP group for one year, from November 1, 2013 to October 31, 2014, (ii) once her needs were removed, her FAP benefits would be reduced to \$567 monthly, and (iii) she would be required to repay a total FAP overissuance of \$4,692.70 for an overissuance occurring from January 2009 to September 2011.
5. On October 28, 2013, Claimant filed a request for hearing stating that she did not understand why she was disqualified from her FAP group and required to repay \$4,692.70.

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).

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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

Additionally, Claimant requested a hearing in response to a September 27, 2013 Intentional Program Violation Client Notice. When a client is advised of the IPV recoupment and/or disqualification action via the DHS-4357 Client Notice of Disqualification and/or Recoupment and requests a hearing, the hearing is limited to requests challenging the overissuance benefit reduction or the repayment amount. BAM 720, p. 18.

In this case, Claimant testified that she did not understand why she was subject to a disqualification and to repayment of \$4,692.70. At the hearing, the Department testified that Claimant was sent the September 27, 2013, Intentional Program Violation Client Notice because she had signed a repayment agreement and waiver of disqualification hearing agreement. Claimant denied signing any such agreements, and the Department failed to present evidence of any signed documents.

However, a September 9, 2013, Hearing Decision and Order for Registration No. 2013-4100 shows that a hearing was held on September 5, 2013 in response to the Department's request for a hearing to establish its allegation that Claimant committed an IPV by trafficking her FAP benefits at [REDACTED] on Rosa Parks Blvd in Detroit. The presiding ALJ found in the Department's favor and ordered that Claimant be disqualified from her FAP group for one year and that she repay the \$4,692.70 in trafficked benefits.

An individual who is found by an ALJ to have trafficked FAP benefits is subject to a program disqualification, which is one year for the first occurrence of an IPV. BAM 720, pp. 15-16. The Department is also entitled to repayment of any overissued benefits. BAM 700 (July 2013), p. 1. For trafficking-related IPV's, the overissued amount is the value of the trafficked benefits as determined by documentation presented to establish the trafficking determination. BAM 720, p. 8. The Michigan Administrative Hearing System (MAHS) does not grant rehearings involving FAP IPV's. BAM 600 (July 2013), p. 43. Although Claimant denied receiving notice of the IPV hearing, an IPV hearing concerning FAP benefits may continue when correspondence to the client sent using first class mail is returned as undeliverable. BAM 720 (July 2013), p. 12. Therefore, Claimant is bound by the ALJ decision in the September 9, 2013 Hearing Decision and Order finding that she committed an IPV by trafficking \$4,692.70 of her FAP benefits resulting in her disqualification from her FAP group for one year and her repayment of the \$4,692.70 in overissued benefits.

The Department testified that, based on the IPV, Claimant's monthly FAP benefits had been reduced to \$567 after removing her needs and starting the administrative recoupment. Overissuances on active programs are repaid by lump-sum cash repayments or administrative recoupment (benefit reduction). BAM 720, p. 19; BAM 725 (July 2013), pp. 5-6. For recoupments based on an IPV finding, FAP benefits are reduced by 20% of the monthly FAP entitlement, which is the amount of FAP a group would receive if any IPV-disqualified members were included in the eligible group. BAM 725, pp. 7-8. Inactive programs are subject to cash repayment. BAM 720, p. 19.

In this case, the Department notified Claimant that her FAP benefits were being reduced to \$567 monthly. However, the Department did not present any evidence supporting its calculation of the monthly FAP amount Claimant was eligible to receive once she was removed as a qualified group member and amounts were deducted for administrative recoupment. Therefore, the Department failed to satisfy its burden of showing that it calculated the monthly FAP allotment in accordance with Department policy.

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 acted in accordance with Department policy when it disqualified Claimant from her FAP group for one year and notified her that she had to repay \$4692.70 in overissued FAP benefits but the Department failed to satisfy its burden of showing that it properly calculated Claimant's monthly FAP benefits subject to administrative recoupment.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED IN PART with respect to Claimant's FAP disqualification and overissuance amount and REVERSED IN PART with respect to calculation of her monthly FAP benefits.

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. Recalculate Claimant's FAP benefits for November 1, 2013, ongoing; and
2. Issue supplements to Claimant for any FAP benefits she is eligible to receive but did not from November 1, 2013, ongoing.



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

Date Signed: March 7, 2014

Date Mailed: March 7, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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:

2014-26107/ACE

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

ACE/tlf

cc:

