

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Respondent

Reg. No: 2007-21223
Issue No: 3052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 12, 2000
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services (department) request for a disqualification hearing upon claimant's request for a hearing on his FAP disqualification and Repay Agreement.

After due notice, an in-person hearing was held on May 12, 2009. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED], from [REDACTED].

The department was represented by Lori Hernandez (OIG registered agent) and Rosemary Williams, Department Manager.

ISSUES

(1) Does the undersigned ALJ have jurisdiction to review the IPV Consent Agreement signed by claimant on March 17, 2007?

(2) Did claimant establish a valid legal basis for invalidating the IPV consent agreement signed by claimant on March 17, 2007?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

(1) Claimant is a FAP recipient. Claimant's primary language is Spanish. He does not read or write well in English.

(2) On the date of claimant's FAP application, he agreed he would report all changes in his income and employment within ten days.

(3) On March 17, 2007, the OIG Agent notified claimant that he had received an FAP overissuance due to unreported employment.

(4) During a face-to-face meeting with claimant on March 17, claimant told the OIG agent that he was uncomfortable signing the disqualification consent agreement (DHS-830) and the Intentional Program Violation Repay Agreement (FIA-4350) in the OIG office. Based on claimant's reservations, the OIG Agent permitted claimant to take the proposed consent agreements home for further consideration.

(5) On March 17, claimant signed the Disqualification Consent Agreement and the Intentional Program Violation Repay Agreement and returned them to the department. Under the terms of the Repay and Disqualification forms, claimant agreed to repay the \$629 FAP overpayment and serve a disqualification period of one year.

(6) On April 2, 2007, the caseworker sent claimant an IPV Program Violation Notice (FIA-4357) summarizing the terms of the IPV sanctions which claimant consented to.

(7) The DHS-4357 Intentional Program Violation Notice (FIA-4357) notified claimant of his hearing rights. The notice plainly states that a hearing request must be submitted within 90 days from the mailing of the DHS-4357. The only reviewable issue is the amount of the repay agreement.

(8) On April 14, 2007, the caseworker entered the IPV sanctions on the computer.

(9) On April 23, 2007, claimant requested a hearing.

CONCLUSIONS OF LAW

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 of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In this case, the department has imposed a disqualification sanction due to an overissuance of FAP benefits as a result of an IPV.

The department's manuals provide the following relevant policy statements and instructions for the department caseworkers:

PAM 720 INTENTIONAL PROGRAM VIOLATION

DEPARTMENT POLICY

IPV--FAP

The client/representative (AR) is determined to have committed an IPV by:

- . A court decision.

- . Administrative Hearing Decision.
- . Client signing a DHS-826, Request for Waiver of Disqualification hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification forms.

Clear and convincing evidence is evidence that “produce(s) in the finder of fact a firm believer in conviction as to the truth of the alleges sought to be established, evidence so clear, direct, and waiting and convincing as to enable [the finder of fact] to come to a clear conviction, without hesitancy, of the truth of the precise facts and issue.” *In remartin* 450 Mich 204, 227; 535 NW 2nd 399 (1995).

The evidence of record shows that claimant voluntarily, without coercion, or any kind of pressure signed the Disqualification Consent Agreement and the Intentional Program Violation Repay Agreement, with complete knowledge of the consequences.

Although claimant argued at the hearing that he did not understand the full ramifications of signing the two documents, because he is primarily a Spanish speaker, the Administrative Law Judge concludes, based on the testimony at the hearing, that claimant had ample opportunity to consult with other persons who would be able to read the documents to him in Spanish, if he so desired.

Taking the entire record as a whole, the Administrative Law Judge concludes that claimant did knowingly sign the documents, with adequate information about their consequences. There is no evidence that the OIG Agent mislead or coerced claimant in any way to sign the documents.

Since claimant signed the documents of his own free will, the Administrative Law Judge is not able to rescind or revoke them.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides that claimant is bound by the Disqualification Consent Agreement and the Intentional Program Violation Repay Agreement which he voluntarily and knowingly signed on March 17, 2007.

The action taken by the department is, hereby, AFFIRMED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 13, 2009

Date Mailed: May 14, 2009

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/she lives.

JWS/tg

cc:

