

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: 200810533  
Issue No: 3055; 1052  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 12, 2009  
Osceola County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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' request for a disqualification hearing. After due notice, a telephone hearing was held on August 12, 2009. Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Did the respondent commit an Intentional Program Violation (IPV) and did the respondent receive an overissuance of benefits that the department is entitled to recoup?

FINDINGS OF FACT

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

- 1) Respondent was a recipient of FAP and FIP benefits during the period of June 2003 through August 2003 and March 2004 through December 2004.

- 2) Respondent began receiving SSI checks for her husband and daughter in August 2003.
- 3) Respondent reported in June 2003 that there had been a problem with the SSI checks and they would not arrive until August 2003.
- 4) In December 2003, respondent fled her home as part of a domestic violence dispute.
- 5) RSDI checks for a member of her household were not under direct deposit and were sent by normal mail, presumably, to the house respondent had fled.
- 6) The Department was aware that respondent had been receiving SSI and RSDI checks.
- 7) On December 11, 2007, the Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of benefits received by respondent as a result of respondent having committed an Intentional Program Violation (IPV); the OIG also requested that respondent be disqualified from receiving program benefits.
- 8) A Notice of Disqualification Hearing was mailed to respondent at the last known address and was not returned by the U.S. Post Office as undeliverable.
- 9) Respondent's last known address is [REDACTED].
- 10) OIG Agent Thomas Lilienthal represented the Department at the hearing; respondent did not appear.
- 11) This is respondent's first alleged IPV.

#### 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).

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 of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. 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 requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the Department has asked that respondent be disqualified from receiving benefits. The Department's manuals provide the following relevant policy statements and instructions for Department caseworkers:

**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 their reporting responsibilities.

Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM, Item 720, p. 1.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent intentionally made a false or misleading statement, or withheld information, **for the purpose of committing an IPV**, with regard to the FAP program.

In this case, the undersigned remains unconvinced that Department has established that respondent did not report as required. A SER application filed in June, 2003 shows that the respondent reported that the SSI checks would be arriving in August. Respondent reported on this form that there had been trouble with the checks and they had not started on time.

Furthermore PAM 801 says:

After the initial DHS inquiry, a BENDEX report is generated whenever RSDI or Medicare begins, changes, or stops for active DHS recipients.

The undersigned finds it incredible that it would take over a year and a half for the Department to become aware of respondent's RSDI benefits, given the frequency of the data exchanges between the two agencies, absent caseworker negligence or agency mistake. Regardless, this is not the fault of the respondent, given that she reported on the initial application that she had applied for benefits, and notified the Department in June, 2003, that the checks would be starting in August, 2003.

Even so, the burden of proof that the Department must meet in order to prove Intentional Program Violation is very high. It is not enough to prove that the respondent was aware of the requirements to report at some point, nor is it enough to prove that the respondent did not report

in a timely manner. The Department must prove in a clear and convincing manner, that, not only did the respondent withhold critical information, but that the respondent withheld this information with the intent to defraud the Department. In other words, the Department must prove that the respondent did not simply forget to meet their obligations to report, but rather, actively sought to defraud the Department.

The Department has not proven that in the current case. At most, the available evidence only shows that the respondent did not report as required in August, 2003. It certainly does not show that she failed to report with intent to defraud the Department. That being said, as stated, the Administrative Law Judge, in light of the evidence and the common practice of agency data exchanges, believes that the respondent did report as required, and any such error is a result of agency error, not client error.

Furthermore, the undersigned is not convinced that the respondent received an overissuance of benefits. On respondent's SER application in June, 2003, she reported that she was applying for SER because the checks from Social Security had not arrived, but would start in August, 2003. The undersigned finds this statement credible, and as such, does not believe there was actual RSDI or SSI income to the family during the months questioned by the Department. Therefore, if there was no income, respondent was not overissued SER, FIP or FAP benefits during that month.

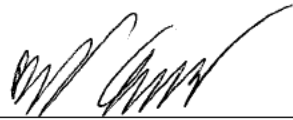
With regard to the Department's complaints of March 2004 through December 2004, the Administrative Law Judge notes that even if he took the Department's words at face value, the \$972 alleged overissuance amount is under the \$1000 per program agency error threshold that was in place in December, 2004. PEM 705. Therefore, recoupment for the FAP program cannot be authorized. With regard to the FIP program, the undersigned notes that the while the

Department did submit FAP budgets, the Department did not submit FIP budgets from the time period in question, and thus has not met their burden of proof in showing that the respondent was overissued FIP benefits. Recoupment is therefore denied for that time period.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that respondent committed an Intentional Program Violation of the FIP or FAP program. Furthermore, the Administrative Law Judge holds that any error in this case was a result of Agency Error. The Department was incorrect in their request for recoupment.

Recoupment is DENIED.



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Robert J. Chavez  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 05/12/10

Date Mailed: 05/13/10

**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.

RJC/dj

cc:

