

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: 2008-27787

Issue No: 3052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 14, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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. After due notice, a hearing was held on January 14, 2009. Respondent did not appear.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether respondent received 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 an ongoing recipient of Food Assistance Program (FAP) benefits.
- (2) On November 4, 2004, respondent received pay from the department for home help. Respondent continued to receive monthly home help payments through October 2005.

(3) On July 25, 2005, respondent submitted an application for Food Assistance Program (FAP) and Medical Assistance (MA) benefits. Respondent did not list the home help income on the application.

(4) On June 1, 2005, the department discovered that respondent was receiving home help aide payments.

(5) On October 11, 2005, the department checked its own records and determined that respondent had been receiving home help aide payments since November 2004.

### 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 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:

#### **PAM 720 INTENTIONAL PROGRAM VIOLATION**

#### **DEPARTMENT POLICY**

#### **All Programs**

Recoupment policies and procedures vary by program and overissuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

[PAM 700](#) explains OI discovery, OI types and standards of promptness. [PAM 705](#) explains agency error and [PAM 715](#) explains client error.

## **DEFINITIONS**

### **All Programs**

**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.

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.

### **FAP Only**

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

### **IPV**

#### **FIP, SDA and FAP**

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

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

Clear and convincing evidence is evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

In this case the evidence clearly shows the department had the income information available, but did not use it. Respondent’s failure to list the home help aide payments on the July 25, 2005, application does not automatically constitute an intentional program violation. It is possible that respondent believed or was told by department staff that the department was aware of the income because it was coming from the department. The department has the burden of showing by clear and convincing evidence that respondent intentionally withheld the income information in order to receive more benefits that she was otherwise eligible for. The evidence in this record is insufficient to meet that burden. In fact, the evidence indicates that the over-issuance was an agency error in accordance with Program Administrative Manual (PAM) 700 cited above.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides the following:

- (1) The evidence submitted by the Department of Human Services is insufficient to establish that respondent committed an intentional program violation.


(2) The evidence does show that an agency error over-issuance occurred. The department may pursue collection of the agency error over-issuance in accordance with Program Administrative Manual (PAM) 705.

/s/  
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Gary F. Heisler  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: February 26, 2009

Date Mailed: February 27, 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.

GFH 

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