

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: 2008-7202
Issue No: 1052; 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 16, 2009
Houghton 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 December 16, 2009. Respondent did not appear. In accordance with Program Administrative Manual (PAM) 720 the hearing proceeds without Respondent.

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) On October 18, 2002, Respondent submitted an application for Family Independence Program (FIP) and Food Assistance Program (FAP) benefits. In the earned income section of the application Respondent listed herself as employed by FIA and reported her husband

as employed at [REDACTED]. The notes made by the case worker are that Respondent reported just having a baby and would be off work for 6 weeks. Respondent signed the application certifying receipt of the acknowledgments. Claimant was placed on Simplified Reporting for Food Assistance Program (FAP) benefits. The Simplified Reporting program has different reporting requirements than other assistance programs.

(2) During November, 2002 through July, 2003 Respondent received income from the Department of Community Health for home help care work.

(3) In December 6, 2002, Respondent began receiving regular bi-weekly employment checks from Our [REDACTED] again. This resumption of work correlates with the case worker's notes stating Respondent would be off work for 6 weeks.

(3) On May 22, 2003, Respondent submitted another application for Food Assistance Program (FAP) benefits. On the application Respondent indicated she was on a medical leave of absence from Our [REDACTED]. Respondent did report that she had some earnings from doing child care. Respondent reported no income for her husband. Respondent signed the application acknowledging the responsibility to report changes.

(4) On August 25, 2003, Respondent's husband began employment at [REDACTED]. He received regular pay during September and October of 2003.

(5) On August 27, 2003, Respondent's Food Assistance Program (FAP) benefits were adjusted based on income changes.

(6) In October, 2003 Respondent's assistance cases were closed.

(7) On October 25, 2007, Respondent was sent an intentional program violation packet.

CONCLUSIONS OF LAW

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 Department alleges two separate intentional program violations. The first one is for Family Independence Program (FIP) benefits during an over-issuance period of one month, January 2003. The second one is for Food Assistance Program (FAP) benefits over-issued between June 1, 2003 and September 30, 2003.

ALLEGED FIP IPV JANUARY 2003

During January, 2003 Respondent had separate reporting requirements for her Family Independence Program (FIP) and Food Assistance Program (FAP) benefits. Respondent was required to report ANY income changes within 10 days for the Family Independence Program (FIP). For the Food Assistance Program (FAP) Respondent was only required to report if her household income exceeded the income limit for her group size. The evidentiary requirement to uphold the alleged intentional program violation for Family Independence Program (FIP) benefits requires clear and convincing evidence that: Respondent knew and understood that she had separate reporting requirements and needed to report ANY change of income within 10 days; and Respondent intentionally did not report the change of income; and Respondent’s motive for

intentionally failing to report ANY change in income was for the purpose of getting Family Independence Program (FIP) benefits that she was not otherwise eligible for.

On the issue of knowing the specific reporting requirements for Family Independence Program (FIP) benefits, the only evidence in the record is the signed application of October 18, 2002. On the issue of not reporting the change of income, the notes taken by the Department case worker specifically state that Respondent would be off work for 6 weeks. Respondent's pay resumed 6 weeks after the application. That evidence shows that Respondent informed the Department her income would be starting back up. No further analysis is needed because evidence submitted by the Department, defeats their own case.

ALLEGED FAP IPV JUNE – SEPTEMBER 2003

In this case, the Department alleges that Respondent committed an intentional program violation because she did not report Home Help income on the May 22, 2003 application. The over-issuance budgets developed by the Department use Respondent's child care income as the only reported income. Respondent's Home Help income is used as unreported earned income.

Respondent's income from [REDACTED] was not used in determining over-issuance because Respondent was on the Simplified Reporting program for Food Assistance Program (FAP) and was only required to report if her household income exceeded the income limit for her group size. Respondent did list the convalescent home on the May 22, 2003, application but noted she was on a medical leave of absence. The income verification submitted for the convalescent home shows that Respondent received income every month during 2003. Respondent's pay for the convalescent home was bi-weekly. There was a gap in checks between May 9 and June 20 that corresponds to the asserted medical leave of absence. Based on notes from the Recoupment Specialist it appears that all three of

Respondent's incomes combined did not exceed the reporting requirement level for Simplified Reporting. Therefore when Respondent began receiving regular income from the convalescent home again, she was not required to report the change of income. Subsequently any failure to report the renewed convalescent home income was not a violation of program requirements and would not be an intentional program violation. Any over-issuance due to the convalescent home income was caused by the Department's policy, not Respondent's actions.

Evidence submitted by the Department shows that Respondent was receiving Home Help income every month from November 2002 through October 2003. Respondent did not show income from this source on the May 22, 2003 application. The Department's assertion is that if Respondent had listed the Home Help income on the application it would have been included in Respondent's financial eligibility budget and no over-issuance (due strictly to the Home Help income) would have occurred.

The evidentiary requirement to uphold the alleged intentional program violation for Family Independence Program (FIP) benefits requires clear and convincing evidence that: Respondent knew and understood that she had to disclose the Home Help income on the application; and Respondent intentionally did not include the Home Help income on the application; and Respondent's motive for intentionally failing to include the Home Help income on the application was for the purpose of getting Food Assistance Program (FAP) benefits that she was not otherwise eligible for. It is clear from the application, the caveats for Respondent's signature, and the case workers notes that Respondent knew or should have known that she was required to list all income and intentionally failed to report the Home Help income. Evidence regarding the purpose of the failure is not so clear.

Evidence submitted shows that Respondent received Food Assistance Program (FAP) benefits as follows: 12/02 - \$310; 1/03 - \$442; 2/03 - \$442; 3/03 - \$141; 4/03 - \$141; 5/03 - \$0;

6/03 - \$553; 7/03 - \$553; 8/03 - \$553; 9/03 - \$553; 10/03 - \$479; 11/03 - \$63. There is insufficient evidence to make any specific findings about Respondent's Food Assistance Program (FAP) benefits and why they varied so much. Notes made by the case worker regarding the May 22, 2003 application state "FAP opened." This evidence combined with \$0 FAP benefits in May 2003 show the case was closed for some reason at the end of April 2003. The corresponding medical leave of absence and new application on May 22, 2003 are sufficient to convince this Administrative Law Judge that Respondent understood the relationship between the amount of income and the amount of FAP benefits. Knowledge of the income/benefit relationship combined with intentionally failing to report some income is conclusive that the intent behind the failure to report is to receive more benefits.

DECISION AND ORDER

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

██████████ committed an intentional program violation by intentionally failing to report income on an application for Food Assistance Program (FAP) benefits. The intentional failure to report income resulted in a \$392 over-issuance of Food Assistance Program (FAP) benefits between June 1, 2003 and September 30, 2003.

The Department of Human Services is entitled to recoup the \$392 over-issuance.

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

Date Signed: March 1, 2010

Date Mailed: March 10, 2010

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 [REDACTED]

cc:

[REDACTED]