

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: 2008-20309  
Issue No: 3055  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
May 13, 2009  
Eaton 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 May 13, 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 benefits during the period of 10-1-2007 through 12-31-2007.
- 2) On 8-1-07, respondent completed a DHS-1171, Application for Assistance, in which she stated that she and her kids lived in the same home [REDACTED]
- 3) On 8-16-07, respondent was evicted from her home.
- 4) Respondent moved in with her boyfriend.
- 5) Respondent's children, who were all on the case at that time, went to live with their father and grandmother.
- 6) Respondent received FAP benefits during this time.
- 7) Respondent did not have possession of the children at least 51% of the time.
- 8) Respondent did not notify DHS that her group composition had changed.
- 9) The father of the children filed an affidavit attesting to the above facts; he also testified that respondent used the benefits to pay for food for the children, as if they had not left the household.
- 10) On 5-16-08, 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.
- 11) 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. Respondent's last known address is: [REDACTED]
- 12) OIG Agent Laura Davis represented the Department at the hearing; respondent did not appear.

- 13) 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).

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.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
  - (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
  - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).
  - (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

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 defrauding the Department**, with regard to the FAP program.

In this case, the Department has established that respondent was probably aware of the responsibility to report all income and employment to the department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. However, the undersigned is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that the respondent intended to defraud the Department with regard to her FAP eligibility.

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. Respondent applied for, and received, FAP benefits on 8-1-07. Respondent's household did not change until more than three weeks after the application, according to the Department investigation. Department Exhibit 6. Furthermore, this household change was the result of an eviction, which might have understandably pushed respondent's reporting responsibility out of her mind to focus on more pressing matters. Respondent's new household size was discovered upon her redetermination in January, 2008, presumably when the respondent reported that her children did not live with her any longer. In order to establish an IPV, the Department must prove conclusively that respondent was attempting to defraud the Department; however, the only thing that has been conclusively proven is that respondent did not report her obligation. It has not been proven that respondent did not report her obligation in an attempt to defraud the Department.

While the undersigned admits that, given the fact that an application was signed a mere three weeks before the eviction in August, 2007, it is more likely than not that respondent consciously avoided her obligation to report, it is important to remember that "more likely than not" is an evidentiary threshold below "clear and convincing". Clear and convincing evidence requires something more, some piece of evidence that clearly elevates respondent's actions from a mere failure to report an income change into something clearly malicious. This does not require evidence that proves maliciousness and intent beyond a reasonable doubt, but something more is

required nonetheless. In the current case, all the Department has proven is that respondent did not report. There is no evidence that clearly supports a finding that there was intent to defraud the Department, versus a respondent who, for instance, simply forgot her obligation to report during a period of extreme stress.

This is not to say that there was no error in this case. The Department has clearly shown, through Exhibits 7, and 8 that respondent received \$2,073 in FAP benefits that she was not entitled to. The undersigned has considered the fact that the respondent used the benefits to feed the children who were originally on the case; however, he does not believe that this mitigates the responsibility to pay back the overissuance.

While the undersigned feels that the children's father was credible when he reported that she used the over-issued food benefits to feed the children, the fact of the matter remains that the children were not in the respondent's household. In order to be claimed upon a case, a child must be with the claiming parent 51% of the time. PEM 212. This was not the case. If it were to be conclusively proven that the children were eligible for the exact same amount of benefits while in the care of their father, the Administrative Law Judge might find reason to avoid the recoupment. However, in the current case, it is unknown if the father, counting the children in the household, would have been eligible for benefits. It is possible he was not, and the undersigned cannot say there was no harm to the Department if we do not know how much in benefits he was eligible for. The father could have been eligible for fewer benefits (or no benefits at all) and thus, without any guidance to show there was no harm, the undersigned must conclude that some harm was done.

Regardless, if the children needed food benefits, he could have easily applied. It was not up to the mother to keep food benefits for children she did not have in her custody. Therefore, the undersigned must conclude that there was an overissuance, and that the overissuance was the

fault of the respondent. The Department may recoup this clear client error, and indeed, it would be a miscarriage of justice for them not to do so.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that respondent committed an Intentional Program Violation of the FAP program. However, the respondent did receive \$2,073.00 in FAP benefits she was not eligible for.

The Department is entitled to recoup the overissuance of benefits respondent ineligibly received. Respondent is ORDERED to reimburse the department for the overissuance.

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

Date Signed: September 1, 2009

Date Mailed: September 2, 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.

RJC/cv

cc:

