

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: 2008-27276  
Issue No: 3055  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 18, 2009  
Mecosta 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 March 18, 2009. Respondent appeared and testified.

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. Respondent was a student at [REDACTED] and had a girl friend/fiancé who resided in Ohio.
- (2) Between May and October, 2007 Respondent used his Food Assistance Program (FAP) electronic benefit card in Ohio twice, in separate instances.

(3) On October 15, 2007, Respondent signed and submitted a re-determination application for Food Assistance Program (FAP) benefits.

(4) Beginning in February, 2008 Respondent used his Michigan issued Food Assistance Program (FAP) benefits frequently, but not exclusively, in Ohio.

(5) On April 24, 2008, [REDACTED] applied for assistance in [REDACTED] Ohio. The application listed Respondent as [REDACTED] fiancé, living with her in Ohio. The application requested assistance with housing and employment. The application was not signed by Respondent.

(6) On May 1, 2008, the assistance office in Ohio faxed a copy of the application to the Office of Inspector General in Michigan.

(7) On May 1, 2008, Respondent was sent notice by the Michigan Department of Human Services that his Food Assistance Program (FAP) would end.

(8) On July 3, 2008, DHS employee, Mitchell, wrote a memorandum stating that per a voicemail from Sherry Lytle, in [REDACTED], Ohio, Respondent received food benefits in Ohio from 4/24/08 through 6/30/08.

(9) On July 20, 2008, Respondent signed a repayment agreement for a \$162 over-issuance of Food Assistance Program (FAP) benefits.

#### 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. The department has asked that respondent be disqualified from receiving Food Assistance Program (FAP) benefits for 10 years for receipt of duplicate Food Assistance Program (FAP) benefits in Michigan and Ohio. 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).

Admission of evidence during an Administrative Law Hearing on Department of Human Services’ matters is not strictly governed by the Michigan Rules of Evidence. In accordance, with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black's Law Dictionary defines competent evidence as: "That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. Also generally, admissible or relevant, as the opposite of incompetent."

Black's Law Dictionary defines incompetent evidence as: "Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself."

The Michigan Rules of Evidence include:

**Rule 102 Purpose**

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

**Rule 601 Witnesses; General Rule of Competency**

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

**Rule 602 Lack of Personal Knowledge**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

**Rule 801 Hearsay; Definitions**

The following definitions apply under this article:

- (a) *Statement.* A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) *Declarant.* A "declarant" is a person who makes a statement.

(c) *Hearsay*. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

**Rule 802 Hearsay Rule**

Hearsay is not admissible except as provided by these rules.

In this case, the department has submitted evidence on the issue of whether Respondent received Food Assistance Program (FAP) benefits in Ohio while still receiving Food Assistance Program (FAP) benefits in Michigan. The evidence consists of a memorandum written by DHS employee Mitchell, stating that per a voicemail from Sherry Lytle in [REDACTED], Ohio, Respondent received food benefits in Ohio from 4/24/08 through 6/30/08. This is hearsay and while it may be admitted for its probative value, it cannot be the basis of the decision in this case.

The Department has failed to submit sufficient evidence on a foundation issue of this case. No further analysis is required.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides the Department has failed to establish that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP).

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

Date Signed: June 1, 2009

Date Mailed: June 2, 2009

2008-27276/GFH

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

cc:

[REDACTED]