

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Respondent

Reg. No: 2008-30438

Issue No: 3055; 6052

Case No:



Load No:

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 did not appear. It is noted that Respondent signed and submitted a signed repayment agreement for the overissuance amount of both programs. Respondent also submitted a signed waiver of disqualification hearing but marked the form as wanting to proceed with an Administrative Disqualification Hearing. Only the Food Assistance Program (FAP) has a disqualification period for an intentional program violation. This hearing is being conduct only on the issue of a the Food Assistance Program (FAP) disqualification.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?

FINDINGS OF FACT

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

(1) On March 15, 2006, claimant signed an application for Food Assistance Program (FAP) benefits. The application listed Claimant's two daughters ( [REDACTED] ) as being members of her household and requested benefits for them.

(2) On July 10, 2006, claimant signed an application for Food Assistance Program (FAP) benefits. The application listed Claimant's two daughters ( [REDACTED] ) as being members of her household and requested benefits for them.

(3) On December 8, 2006, Department of Human Services, employee Neal, spoke to [REDACTED] father of [REDACTED] by telephone.

(4) On July 17, 2008, Department of Human Services, employee Mitchell, spoke to [REDACTED] father [REDACTED] by telephone.

(5) On July 28, 2008, claimant was sent all information and forms that are part of this case.

(6) On August 22, 2008, claimant was again sent all information and forms that are part of this case.

(7) On September 9, 2008, the Office of Inspector General requested a hearing on this matter.

(8) On September 12, 2008, the Office of Inspector General received signed repay agreements and disqualification waiver forms from claimant dated 8/5/08 and 9/2/08.

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 alleges that claimant submitted assistance applications and received benefits for herself and her two daughters when in fact her daughters were living with their respective fathers. 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 where claimant's daughters lived. Regarding [REDACTED] the department submitted a memorandum written by department employee, Neal (Department Exhibit #34). The memorandum states that during a telephone contact, [REDACTED] stated [REDACTED] does not live with claimant. This is hearsay, and while it may be admitted for its probative value, it cannot be the basis of the decision in this case.

Regarding [REDACTED] the department submitted a memorandum written by Department employee, Mitchell (Department Exhibit # 37). The memorandum states that during a telephone contact, Jason Bowmaster, stated claimant left [REDACTED] with him in 2/2006, he was granted custody of [REDACTED] in 6/2006 or 7/2006 and [REDACTED] has lived with him ever since. 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/  
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Gary F. Heisler  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: May 29, 2009

Date Mailed: June 1, 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 

cc:

