

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: 2009-1157
Issue No: 1052; 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 18, 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 March 18, 2009. Respondent appeared and testified. It is noted that Respondent spoken English but he had his son act as a translator for him.

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 Family Independence Program (FIP) and Food Assistance Program (FAP) benefits. Respondent began receiving benefits in 2002 and had signed applications every year acknowledging his responsibility to report all changes in income that might change his eligibility for benefits.

(2) Beginning March 1, 2005 through October 31, 2005 respondent was being paid \$450 per month as rental income. The canceled checks are from an [REDACTED]

(3) Respondent did not report the rental income to the department.

(4) On May 10, 2005, respondent signed an annual application to renew his Family Independence Program (FIP) and Food Assistance Program (FAP) benefits. Respondent did not report the rental income on the May 10, 2005, application.

(5) On June 28, 2005, [REDACTED] submitted an application for assistance. He used the same address as respondent on the application.

(6) Due to subsequent investigation by the department, beginning in August, 2005 the rental income was budgeted into respondent's financial eligibility budgets. Respondent never reported the rental income.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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 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).

During the hearing respondent initially asserted that he had reported the rental income in March. Respondent testified that he gave the caseworker the March check from [REDACTED]. Copies of the check and deposit slip in evidence show the March rental check was written on 3/1/05 and deposited on 3/2/05.

When claimant was asked why he did not report the rental income on the May 10, 2005, application respondent initially asserted he was out of the country then and does not know what was put on the application. When respondent was asked who forged his signature on the

application in the presence of the DHS caseworker, Respondent changed his story about being out of the country.

In this case, the department established their case against respondent. Respondent presented no credible evidence to explain, extenuate, or rebut the department's case.

DECISION AND ORDER

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

Respondent committed an intentional program violation by intentionally failing to report rental income to the department. The purpose of respondent's intentional failure to report the income was to receive Family Independence Program (FIP) and Food Assistance Program (FAP) benefits he was not eligible for.

Between March 1, 2005 and July 31, 2005 respondent was over-issued Family Independence Program (FIP) benefits in the amount of \$1,800. Between March 1, 2005 and July 31, 2005, respondent was over-issued Food Assistance Program (FAP) benefits in the amount of \$788. The Department of Human Services is entitled to recoup the total over-issuance of \$2,588.

/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

2009-1157/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]