

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: 2009-11915

Issue No: 3055

Case No:

[REDACTED]

Load No:

Hearing Date:

May 20, 2009

Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 May 20, 2009. Respondent personally appeared and testified.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) on the Food Assistance Program (FAP) 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 January 12, 2009, the department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of FAP 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.

2. Respondent signed Assistance Application (1171) on June 14, 2005, acknowledging that she understood her failure to give timely, truthful, complete and accurate wage/employment information could result in a civil or criminal action or an administrative claim against her (Department's Exhibit 1, pages 13-20).

3. Respondent also certified she received the right and responsibilities information on June 14, 2005, that explains in detail what her reporting obligations are. (Department's Exhibit 2, pages 21-24).

4. On June 27, 2005, department mailed to the respondent an Eligibility Notice regarding FAP benefits for the months of July, 2005 to June, 2006, based upon reported household circumstances of \$0 income. Respondent was advised to "report all changes within 10 days". (Department's Exhibit 3, page 25).

5. On November 28, 2005, department received a New Hire Report showing that the respondent was employed with [REDACTED] ([REDACTED]) and earning wages. (Department's Exhibit 4, page 26).

6. On November 29, 2005, contact was made with the respondent regarding her employment with [REDACTED]. Respondent stated that she terminated this employment due to conflict with her schedule with Lansing School District. (Department's Exhibit 5, page 27).

7. On November 29, 2005, department mailed the respondent an Eligibility Notice telling her of the new FAP benefit amount due to inclusion of [REDACTED] Income. Respondent was again advised to "report all changes within 10 days". (Department's Exhibit 6, page 28).

8. On November 29, 2005, department also mailed the respondent a Verification Checklist giving her until December 9, 2005, to provide verification of employment income and paycheck stubs for November and December. (Department's Exhibit 7, page 29).

9. Respondent provided a pay stubs from [REDACTED] on November 30, 2005 with a note that she received a raise at the "District" (Lansing School District). (Department's Exhibit 8, page 30).

10. On December 13, 2005, department received verification of employment income from [REDACTED]. On December 14, 2005, department also received verification of employment income from Lansing School District. (Department's Exhibits 9 and 10, pages 31-35).

11. On December 20, 2005, department mailed the respondent an Eligibility Notice telling that her [REDACTED] Income had been removed from her FAP case, and that the income from LSD has been added. Notice again stated to "report all changes within 10 days". (Department's Exhibit 11, page 36).

12. On April 10, 2007, department received a detailed statement from [REDACTED] [REDACTED] showing the respondent has been working there from July 1, 2005 to June 30, 2006. (Department's Exhibit 12, pages 37-39).

13. Department computed FAP overissuance budgets and determined that the respondent received \$1,217.00 in FAP benefits she was not eligible for due to her failure to report earned income from [REDACTED] and [REDACTED] (Department's Exhibits 13 and 14, pages 40-50).

14. Respondent was clearly instructed and fully aware of her responsibility to report all household income to the department.

15. Respondent was physically and mentally capable of performing her reporting responsibilities.

16. Respondent has not committed any previous intentional FAP program violations.

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:

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). PAM, Item 700, p. 1.

Definitions

The **Automated Recoupment System (ARS)** is the part of CIMS that tracks all FIP, SDA and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for active programs.

A **claim** is the resulting debt created by an overissuance of benefits.

The **Discovery Date** is determined by the Recoupment Specialist (RS) for a client or department error. This is the date the OI is known to exist and there is evidence available to determine the OI type. For an Intentional Program Violation (IPV), the Office of Inspector General (OIG) determines the discovery date. This is the date the referral was sent to the prosecutor or the date the OIG requested an administrative disqualification hearing.

The **Establishment Date** for an OI is the date the DHS-4358A-D, Repay Agreement, is sent to the client and for an IPV, the date the DHS-4357 is sent notifying the client when the disqualification and recoupment will start. In CIMS the “establishment date” has been renamed “notice sent date.”

An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold).

Overissuance Type identifies the cause of an overissuance.

Recoupment is a DHS action to identify and recover a benefit OI. PAM 700, p. 1.

PREVENTION OF OVERISSUANCES

All Programs

DHS must inform clients of their reporting responsibilities and act on the information reported within the Standard of Promptness (SOP).

During eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities, including:

- . Acknowledgments on the application form, **and**
- . Explanation at application/redetermination interviews, **and**
- . Client notices and program pamphlets.

DHS must prevent OIs by following PAM 105 requirements and by informing the client or authorized representative of the following:

- . Applicants and recipients are required by law to give complete and accurate information about their circumstances.
- . Applicants and recipients are required by law to promptly notify DHS of all changes in circumstances within 10 days. FAP Simplified Reporting (SR) groups are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size.
- . Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.
- . A timely hearing request can delete a proposed benefit reduction.

INTENTIONAL PROGRAM VIOLATION

DEFINITIONS

All Programs

Suspected IPV

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).

The federal Food Stamp regulations read in part:

- (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).

IPV

FIP, SDA AND FAP

IPV exists when the client/AR is determined to have committed an Intentional Program Violation by:

- . A court decision.
- . An administrative hearing decision.
- . The client signing a DHS-826, Request for Waiver of Disqualification or DHS-83, Disqualification Consent Agreement, or other recoupment and disqualification agreement forms. PAM, Item 720, p. 1.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 720, p. 2.

OVERISSUANCE AMOUNT

FIP, SDA, CDC and FAP Only

The amount of the OI is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. PAM 720, p. 6.

IPV Hearings

FIP, SDA, CDC, MA and FAP Only

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings for cases when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**

The total OI amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1,000 or more, **or**

- . The total OI amount is less than \$1,000, **and**
 - .. The group has a previous IPV, **or**
 - .. The alleged IPV involves FAP trafficking, **or**
 - .. The alleged fraud involves concurrent receipt of assistance (see PEM 222), **or**
 - .. The alleged fraud is committed by a state/government employee.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained. PEM, Item 720, p. 10.

DISQUALIFICATION

FIP, SDA and FAP Only

Disqualify an active **or** inactive recipient who:

- . is found by a court or hearing decision to have committed IPV, **or**
- . has signed a DHS-826 or DHS-830, **or**
- . is convicted of concurrent receipt of assistance by a court, **or**
- . for FAP, is found by SOAHR or a court to have trafficked FAP benefits.

A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. PAM 720, pp. 12-13.

Standard Disqualification Periods

FIP, SDA and FAP Only

The standard disqualification period is used in all instances except when a **court** orders a different period (see **Non-Standard Disqualification Periods**, in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- . One year for the first IPV
- . Two years for the second IPV
- . Lifetime for the third IPV

FIP and FAP Only

- . Ten years for concurrent receipt of benefits (see PEM 203). PAM 720, p. 13.

In this case, the department has established that respondent was 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. Respondent's defense to the IPV allegation is that her caseworker should have known she was

going back to work in September, 2005, and that she did report her [REDACTED] to the caseworker. Documentation in respondent's case record, namely caseworker's notes of June 21, 2005, quote telephone calls from the respondent on this date to state she did not wish to apply for cash assistance, that she no longer worked at [REDACTED] and that she is off work from [REDACTED] until September, 2005. Respondent therefore promptly reported stopped income to the department which resulted in increase in her FAP benefits from \$172 she had been receiving from April to June, 2005, to \$592 per month from July, 2005 to September, 2005, \$601 from October, 2005 to January, 2006, and \$587 for January, 2006. Respondent had the responsibility to report her return to work in September, 2005 within 10 days to the department, but failed to do so, assuming according to her testimony that the department should have somehow kept track of when she may return to work. The fact that the respondent's FAP benefits increased from \$172 to \$592 per month when her income stopped in June, 2005 and remained at this higher level through the end of January, 2006, is further evidence that she did not report her earned income to the department. It is not credible to conclude that the respondent would not notice that she is receiving over \$420 more in FAP benefits per month even though she is back to work. Respondent also claims that she did report her [REDACTED] income in a timely manner, however evidence provided by the department shows that it is through New Hire Employment Report that such income became known to the caseworker.

This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that respondent committed a first intentional violation of the FAP program, resulting in a \$1,217.00 overissuance from July 1, 2005 to January 31, 2006. Consequently, the department's request for FAP program disqualification and full restitution must be granted. |

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed a first intentional FAP program violation.

Therefore it is ORDERED that:

1. Respondent shall be personally disqualified from participation in the FAP program for one year, but the rest of the household may participate. This disqualification period shall begin to run immediately as of the date of this Order.
2. Respondent is responsible for full restitution of the \$1,217.00 FAP overissuance caused by her Intentional Program Violation (IPV).

/s/

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 14, 2009

Date Mailed: July 15, 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.

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cc: 