

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: 2009-13579

Issue No: 3055

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 29, 2009

Genesee 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 April 29, 2009. Respondent did not appear.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether respondent received an overissuance of benefits that the department is entitled to recoup?

Whether Respondent received Food Assistance Program (FAP) benefits in two states at the same time?

FINDINGS OF FACT

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

(1) On July 12, 2005, Respondent submitted an application for Food Assistance Program (FAP) benefits. Respondent signed the application acknowledging that he knew the requirement to report changes which could affect his benefits within 10 days. Claimant was

certified for a two year benefit period and began receiving Food Assistance Program (FAP) benefits.

(2) Beginning February 2, 2007, Respondent used his Electronic Benefit Transfer (EBT) card almost exclusively in Tennessee. Respondent no longer met the requirements to be a resident of Michigan.

(3) On May 23, 2007, Respondent submitted an assistance application in Tennessee for Food Assistance Program (FAP) and Medical Assistance (MA) benefits. Respondent was subsequently approved, received, and used Food Assistance Program (FAP) benefits through the State of Tennessee, beginning May 23, 2007.

(4) During June and July 2007 Claimant was received and used Food Assistance Program (FAP) benefits issued through the State of Michigan.

#### 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:

## **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).

One eligibility factor to receive Food Assistance Program (FAP) benefits through the State of Michigan is residency in Michigan. Department policy provides the following guidance for caseworkers. The Department's policies are available on the internet through the Department's website.

## **PEM 220 RESIDENCE**

### **DEPARTMENT POLICY**

#### **All Programs**

BCIS refers to the Bureau of Citizenship and Immigration Services, formerly, Immigration and Naturalization Service.

To be eligible, a person must be a Michigan resident. Use the requirements in the “**RESIDENCE**” section in this item.

### **RESIDENCE**

#### **FIP, SDA and AMP**

A person is a resident if he:

- is not receiving assistance from another state; **and**
- is living in Michigan, except for a temporary absence, **and**
- intends to remain in the state permanently or indefinitely.

**CDC and FAP** A person is considered a resident while living in Michigan for any purpose **other than a vacation**, even if he has no intent to remain in the state permanently or indefinitely.

Eligible persons may include:

- persons who entered the state with a job commitment or to seek employment; and
- students (For FAP **only**, this includes students living at home during a school break.)

### 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 his move to Tennessee in February, 2007 in order to receive Food Assistance Program (FAP) benefits he was not eligible for.

Between February 1, 2007 and June 30, 2008 Respondent received an over-issuance of Food Assistance Program (FAP) benefits in the amount of \$1,678. The Department of Human Services is entitled to recoup the \$1,678 over-issuance.

Respondent received and used Food Assistance Program (FAP) benefits concurrently through both the State of Michigan and the State of Tennessee beginning May 23, 2007.

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

Date Signed: June 11, 2009

Date Mailed: June 12, 2009

2009-13579/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: 