

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: 200918284
Issue No: 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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' request for a disqualification hearing. After due notice, a telephone hearing was held on July 1, 2009. Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Did the respondent commit an Intentional Program Violation (IPV) and did the respondent receive 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 a recipient of FAP benefits during the period of June 1, 2002 through April 30, 2003.

- 2) Respondent had been working during this time.
- 3) Respondent had signed an application for assistance on June 14, 2002.
- 4) On this application, respondent reported she was working and accurately gave her rate of pay.
- 5) The Department did not request income verifications or further information from the respondent with regard to her employment.
- 6) DHS did not adjust respondent's income at the time of reporting and did not adjust respondent's FAP benefits accordingly.
- 7) On February 20, 2009, the Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of 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.
- 8) A Notice of Disqualification Hearing was mailed to respondent at the last known address and was not returned by the U.S. Post Office as undeliverable.
- 9) Respondent's last known address was [REDACTED].
- 10) OIG Agent Delbert Holser represented the Department at the hearing; respondent did not appear.
- 11) This is respondent's first alleged IPV.

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:

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.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent intentionally made a false or misleading statement, or withheld information, **for the purpose of committing an IPV**, with regard to the FAP program.

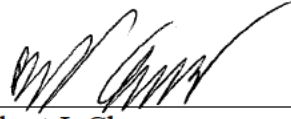
In this case, the undersigned remains unconvinced that Department has established that respondent did not report as required. Department Exhibit 3, the DHS-1171 of June 14, 2002, shows that respondent accurately reported her employment. Given that this was the first major exhibit presented by the Department, and that this exhibit was supposed to show that claimant had failed to report her income, the undersigned is highly skeptical of all subsequent testimony by the Department. As respondent clearly reported her income, any failure to adjust claimant's FAP benefits was a result of agency error. While it is possible that respondent didn't report a change in group size, there is no evidence in the hearing packet that shows that claimant did not report, and the undersigned is certainly not going to take the Department's word for it, given the previous failures in this case.

Furthermore, even though respondent was not at fault for the overissuance, respondent received an overissuance of benefits. However, the Administrative Law Judge has reviewed the budgets submitted by the Department, and after correcting the numerous errors within these budgets, has come to the conclusion that the amount of the overissuance was under \$1000. At the time the overissuance was discovered, if the overissuance was a result of agency error, any agency error under \$1000 was not to be recouped. PAM 705. The amount in question is below \$1000. Recoupment should be denied.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that respondent committed an Intentional Program Violation of the FAP program. Furthermore, the Administrative Law Judge holds that any error in this case was a result of Agency Error. The Department was incorrect in requesting recoupment when the amount was less than \$1000.

Recoupment is DENIED.



Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 05/12/10

Date Mailed: 05/13/10

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.

RJC/dj

cc:

