

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: 2009-20669
Issue No: 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2009
Genesee 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 appear at the hearing.

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 9-1-07 through 12-31-07.
- 2) Respondent had been receiving SSI for a period of time before July, 2007.

- 3) Respondent had signed an application for assistance on 2-23-07.
- 4) In July, 2007, respondent became a recipient of RSDI benefits; this resulted in a significant increase to his unearned income.
- 5) Respondent reported this at the time of the increase; respondent further reported it during his redetermination on 12-28-07.
- 6) DHS did not adjust respondent's income at the time of reporting and did not adjust respondent's FAP benefits accordingly.
- 7) On 3-9-09, 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) OIG Agent Kristin Kerr represented the Department at the hearing; respondent appeared and brought along his daughter, [REDACTED], as a witness.
- 10) 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 defrauding the Department**, with regard to the FAP program.

In this case, the undersigned remains unconvinced that Department has established that respondent did not report as required. Respondent credibly testified at hearing that he had reported the change in his Social Security income by phone call, as required. Respondent's witness also credibly testified to this fact. The Administrative Law Judge, in light of the quite

common, and accurate, complaint that DHS officials either do not respond to phone messages or do not follow up on reported information, especially in the Genesee County branch, finds respondent's testimony credible. Furthermore PAM 801 says:

After the initial DHS inquiry, a BENDEX report is generated whenever RSDI or Medicare begins, changes or stops for active DHS recipients.

The undersigned finds it incredible that it would take 6 months for the Department to become aware of respondent's switch from SSI to RSDI, given the frequency of the data exchanges between the two agencies, absent caseworker negligence or agency mistake. Regardless, this is not the fault of the respondent.

Even so, the burden of proof that the Department must meet in order to prove Intentional Program Violation is very high. It is not enough to prove that the respondent was aware of the requirements to report at some point, nor is it enough to prove that the respondent did not report in a timely manner. The Department must prove in a clear and convincing manner, that, not only did the respondent withhold critical information, but that the respondent withheld this information with the intent to defraud the Department. In other words, the Department must prove that the respondent did not simply forget to meet their obligations to report, but rather, actively sought to defraud the Department.

The Department has not proven that in the current case. At most, the available evidence only shows that the respondent did not report as required in July, 2007. It certainly does not show that he failed to report with intent to defraud the Department. That being said, as stated, the Administrative Law Judge, in light of the testimony and the common practice of agency data exchanges, believes that the respondent did report as required, and any such error is a result of agency error, not client error.

That being said, the sad fact of the matter is that, even though respondent was not at fault for the overissuance, respondent has received an overissuance of benefits nonetheless. The Administrative Law Judge has reviewed the budgets submitted by the Department and can find no errors. Even though the overissuance was a result of agency error, any agency error over \$500 is to be recouped. PAM 705. Because respondent received unearned income, respondent is not eligible for any other deductions or changes on the budget that might normally be applied to earned income. Therefore, the undersigned finds that that the Department has correctly requested recoupment and may recoup the overissuance as requested.

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 Department Error. The Department was correct in requesting recoupment in the amount of \$1,170.00.

The Department is ORDERED to process any recoupment as would be consistent with the policies found in PAM 705, Agency Error Overissuances. Recoupment of \$1,170.00 is approved.

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

Date Signed: September 21, 2009

Date Mailed: September 21, 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.

RJC/cv

cc:

