

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: 2009-26487
Issue No: 3055; 1052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 23, 2009
Wayne 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 September 23, 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 and FIP benefits during the period of December 1, 2007 through February 29, 2008.
- 2) In November, 2007, respondent moved to North Carolina and requested benefits from the North Carolina Human Services.
- 3) Claimant changed her address during this time, put utilities in her name, and started working at a job in a Department store.
- 4) Respondent also received concurrent benefits from North Carolina Human Services.
- 5) Even though respondent was living in North Carolina, respondent was still using her FAP benefits in Michigan.
- 6) At no point did respondent notify the Department that she had moved.
- 7) Respondent was aware of the responsibility to report all changes to the Department.
- 8) On May 15, 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.
- 9) A Notice of Disqualification Hearing was mailed to respondent at the last known address and was returned by the U.S. Post Office as undeliverable. Respondent's last known address is: [REDACTED].
- 10) OIG Agent Darryl Garner 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).

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).

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.

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).
 - (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).

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 for the purpose of defrauding the Department with regard to the FAP program.

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. Furthermore, there is clear and convincing evidence that the respondent intended to mislead the Department with regard to her FAP eligibility.

The great weight of the evidence shows that respondent moved to North Carolina in [REDACTED]. The Department submitted a packet, Department Exhibit 4, which contains an electric bill, dated for [REDACTED], in the respondent's name. This bill is for an address in North Carolina. The packet also contains a lease agreement for this North Carolina address, in the respondent's name, and starting on [REDACTED]. Finally, the issue was discovered thanks to reporting by North Carolina Human Services, where respondent was receiving benefits during the time period in question.

While the Department's submitted list of FAP purchases, Department Exhibit 6, shows that the FAP benefits were being used in Michigan until March, 2008, the undersigned feels, in light of the great weight of the evidence that respondent was living in North Carolina, that the far more likely option is that another person was using respondent's FAP benefit card.

The undersigned views all of these facts as clear and convincing evidence that the respondent specifically misled the Department, in an attempt to defraud the Department of FAP benefits—an intentional program violation. Respondent was living in North Carolina during the time period in question, and knew, or should have known, that she was not eligible for benefits.

Respondent continued to receive benefits, and somehow, the benefits were spent in her absence. Respondent received concurrent benefits with North Carolina Human Services. Respondent's failure to report this change, and her subsequent receipt and spending of the benefits involved raises respondent's conduct from a mere failure to report to clear and convincing evidence of intent to defraud. The evidence shows that respondent was aware that she was receiving Michigan benefits at the time she lived in North Carolina. Respondent should have been aware that this was in violation of policy. She did not, and was most likely doing so in an attempt to receive two sets of benefits. This is the very definition of intentional program violation.

Therefore, as a result of the failure to report her change of residence, respondent committed an IPV, and received an overissuance in benefits. In Exhibit 5, the Department convincingly established that the correct overissuance amount that they are entitled to recoup was in the amount of \$1278.

Finally, as a result of the IPV, the Department properly requested that the respondent be disqualified from participation in the FAP programs for the period of one year.

With regard to the FIP program, the ADC/FIP portion of the hearing request must be dismissed without prejudice because the notice of hearing was returned by the Post Office as undeliverable. MAC R 400.3130(5); PAM 725.

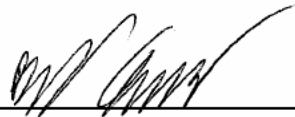
DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed an Intentional Program Violation of the FAP program and the department is entitled to recoup the overissuance of \$1,278.00.

Accordingly, the respondent is disqualified from participation in the FAP program for a period of one year.

The department is entitled to recoup the overissuance of benefits respondent ineligibly received. Respondent is ORDERED to reimburse the department for the overissuance.

The ADC/FIP portion of the hearing request is DISMISSED without prejudice because the notice of hearing was returned as undeliverable. _____



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

Date Signed: 10/29/09

Date Mailed: 10/30/09

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:

