

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: 2009-27789
Issue No: 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 23, 2009
Macomb 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 benefits during the period of August 1, 2003 through August 31, 2004.

- 2) On August 25, 2003, January 12, 2004, and July 19, 2004, respondent completed a DHS-1171, Application for Assistance, in which he reported his income as between \$600 and \$1200 per month.
- 3) These applications were sent in as part of an assistance redetermination.
- 4) On July 18, 2004, respondent submitted a DHS-38, Verification of Employment, showing that he made anywhere between \$500 and \$880 per month.
- 5) On December 20, 2004, a second DHS-38 was sent directly to respondent's employer.
- 6) The employer stated that respondent had been fired in August, 2004, because he had been embezzling money from the company.
- 7) Furthermore, the employer verified that the DHS-38 submitted by respondent had been forged, and that the amounts reported as income were actually the amounts respondent had been embezzling.
- 8) Respondent's actual pay was paid by the job, and usually was several thousand dollars per month.
- 9) Respondent received FAP benefits during this time period, but did not report this actual income.
- 10) Respondent was aware of the responsibility to report all employment and income to the department.
- 11) On March 30, 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.

- 12) 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.
Respondent's last known address is: [REDACTED].
- 13) OIG Agent James Linaras represented the Department at the hearing; respondent did not appear.
- 14) 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.

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 his FAP eligibility.

Respondent filled three different assistance applications over the course of a year and never mentioned to the Department that he was actually making far more money than he stated. Furthermore, the money he did report to the Department was actually money he had been embezzling from the company, according to the company's testimony. Moreover, the verification of employment was forged; this forgery was proven after comparing the signatures on the verification that respondent turned in with the verification provided directly from the company. Even if the forgeries weren't an issue, respondent told the Department that he was only making between 600 and 1200 dollars per month. This was false. According to Department Exhibit 7, Verification of Employment, respondent was actually making thousands of dollars per month during the time period in question. This had been going on since the initial application; at no time did respondent notify the Department of this extra income.

The undersigned views all of these facts as clear and convincing evidence that the respondent specifically misled the Department, and was extending the fraud he was committing against his employer towards DHS in an attempt to defraud the Department of FAP benefits—an intentional program violation.

Therefore, as a result of the failure to report all income, respondent committed an IPV, and received an overissuance in benefits. In Exhibit 10, the Department convincingly established that the correct overissuance amount that they are entitled to recoup was in the amount of \$4204.

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.

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 \$4,204.00.

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.



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:

