

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: Kimberly Merchant,  
Respondent

Reg. No: 2009-29308  
Issue No: 3055  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
December 16, 2009  
Ingham 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 December 16, 2009. Respondent did not appear. In accordance with Program Administrative Manual (PAM) 720 the hearing proceeds without Respondent.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether respondent received 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 an ongoing recipient of Food Assistance Program (FAP) benefits.

- (2) On April 7, 2003, Respondent submitted an application for benefits which did not show her husband as a member of the household. Respondent reported to the case worker that her husband had left the home in January, 2003.
- (3) Between April 7, 2003 and September 2, 2005, Respondent submitted eight applications for assistance. Respondent did not show her husband as a member of the household on any of these applications.
- (4) On July 12, 2005, Department caseworker Fullerton spoke with Respondent's landlord by telephone. The landlord stated that Respondent's husband lived in the home.
- (5) On August 18, 2005, Respondent's husband, [REDACTED], signed a written statement that he stays in a camper on [REDACTED] [REDACTED].
- (6) On December 23, 2005, both Respondent and [REDACTED] signed a Semi-Annual Contact Report (DHS-1046) stating [REDACTED] was back in the home as of October, 2005.
- (7) On June 12, 2009, Respondent was sent notice of the alleged intentional program violation.

#### 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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).

[Admission of evidence during an Administrative Law Hearing on Department of Human Services’ matters](#) is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black’s Law Dictionary defines competent evidence as: “That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. Also generally, admissible or relevant, as the opposite of incompetent.”

Black's Law Dictionary defines incompetent evidence as: "Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself.

The Michigan Rules of Evidence include:

**Rule 102 Purpose**

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

**Rule 601 Witnesses; General Rule of Competency**

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

**Rule 602 Lack of Personal Knowledge**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

**Rule 801 Hearsay; Definitions**

The following definitions apply under this article:

(a) *Statement*. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant*. A "declarant" is a person who makes a statement.

(c) *Hearsay*. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

**Rule 802 Hearsay Rule**

Hearsay is not admissible except as provided by these rules.

The first issue to be considered is that of [REDACTED] presence in the home during the alleged intentional program violation period of 4/1/03 – 11/30/04. Proving that point by clear and convincing evidence is critical to the Department's case. The only evidence submitted on that point by the Department is a hearsay statement from a Department case worker dated July 12, 2005. As outlined above the decision in this Administrative Law Hearing must be based on admissible evidence. Not only is the hearsay statement insufficient as the basis of a finding of fact, it is also seven months after the alleged intentional program violation period.

The Department has failed in its evidentiary burden to establish an intentional program violation.

**DECISION AND ORDER**

The Administrative Law Judge decides the Department has failed to establish an intentional program violation.

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

Date Signed: February 11, 2010

Date Mailed: February 18, 2010

2009-29308/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 [REDACTED]

cc: [REDACTED]