

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: 2009-31722  
Issue No: 3055  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
September 30, 2009  
Wayne 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 September 30, 2009. Respondent did not appear.

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) On June 18, 2004, Respondent submitted an assistance application for Food Assistance Program (FAP) benefits. Respondent listed [REDACTED] on the application as living in the same home and as the mother of his two children who were also in the home. Respondent specifically marked that he wanted benefits for himself. Respondent did not

mark that he did, or did not, want benefits for [REDACTED] or their two children.

Respondent did not mark whether the other three persons in the home bought, prepared, or ate together. The application showed there was no earned income and was signed by both Respondent and [REDACTED]. Respondent began receiving Food Assistance Program (FAP) benefits for the group of four.

(2) On June 7, 2005, Claimant submitted an application for Medical Assistance (MA). Respondent listed [REDACTED] on the application as living in the same home and as the mother of his two children who were also in the home. Respondent specifically marked that he wanted benefits for himself and did not want benefits for [REDACTED] or their two children. Respondent did mark that the other three persons in the home bought, prepared, and ate together. The application showed there was no earned income and was signed by Respondent. Respondent began receiving Food Assistance Program (FAP) benefits for the group of four.

(3) On July 14, 2005, the Department became aware that [REDACTED] had employment income which was not included in the financial eligibility budgets for Food Assistance Program (FAP) benefits.

(4) On August 25, 2009, notice of this hearing was mailed to Respondent's last known address.

### 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:

## **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).

In this case, Respondent did not mark the applications in a manner that indicates he intended to deceive the Department. The applications do not constitute clear and convincing evidence of intent to commit fraud by Respondent.

The evidence indicates there was an over-issuance of Food Assistance Program (FAP) benefits. However, the over-issuance is not due to an intentional program violation.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides the following:

Respondent did not commit an intentional program violation.

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

Date Signed: November 5, 2009

Date Mailed: November 16, 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.

GFH 

cc:

