STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: ██████████,

          Respondent

Reg. No: 200931846
Issue No: 3055; 4052
Case No: ████████
Load No: ████████
Hearing Date:
February 24, 2010
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 February 24, 2010. 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 March 1, 2005 through September 30, 2005.

2) On February 23, 2005, Respondent filed a DHS-1171, requesting FAP benefits.

3) Respondent reported on this application that she and her spouse, ███████ ████, were employed and receiving income.

4) Respondent reported that she worked approximately 38 hours per week at a rate of $7 per hour. Respondent also reported that, ████████ was employed by ██████ ███████, and worked approximately 40 hours per week with a monthly pay of approximately $380.

5) A Work Number inquiry later revealed that ████████ was also employed by ██ ████████████████, and had been since January 9, 2005.

6) Respondent received regular pay checks until at least June 28, 2006.

7) Respondent was receiving FAP benefits during this time.

8) Respondent was aware of the responsibility to report all employment and income to the department.

9) On June 22, 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.

10) 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: ███████████████████████████.

11) OIG Agent ███████████ represented the Department at the hearing; Respondent did not appear.

12) 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 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:

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. **B**AM, 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 committing an IPV.

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.

Respondent told the Department on February 23, 2005, that her spouse, ██████████ ████, was employed by █████████████, working approximately 40 hours per week, and listed no other employment for Mr ████. However, a Work Number inquiry revealed that Mr. ████ was also employed by ██████████████████████ since January 9, 2005. Had Mr. ████ started employment at ████ after the Respondent had filed her application and she had not reported the employment and income at ████, the underlying issue would have been merely a failure to report income, and the Administrative Law Judge would admit that there would be doubts as to whether the Respondent intentionally meant to mislead the Department, or had a simple lapse of memory.

However, Mr. ████ employment record, as presented by the Department, paints a very different picture. Mr. ████ employment records show that he started his employment at ████ ██ on January 9, 2005. This was before the Respondent filed for FAP benefits. Respondent therefore neglected to report all employment, as required, to the Department; this rises far beyond a memory lapse. It appears that the Respondent actually produced and submitted false information for the Department. For that reason, the undersigned believes that this falsehood was clear and convincing evidence of intent to mislead the Department in an attempt to defraud the Department—an intentional program violation.

Therefore, as a result of the failure to report all income in a timely manner, Respondent committed an IPV, and received an overissuance in benefits, starting with her February 23, 2005 application. The undersigned finds that the correct amount that the Department may recoup in improperly issued FAP benefits is $2,893.00.

Finally, as a result of the IPV, the Department properly requested that the Respondent be disqualified from participation in the FAP program 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 $2,893.00 in FAP benefits.

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.

/s/ _____

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

Date Signed: July 13, 2010

Date Mailed: July 13, 2010

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/hw

cc: