

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: 2009-32378

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) On May 11, 2005, Respondent signed an application for Food Assistance Program (FAP) benefits. Respondent was classified under the simplified reporting program for Food Assistance Program (FAP) benefits.

- (2) In January, 2006 Respondent began receiving pay from a different employment source than that listed on the application of May 11, 2005.
- (3) In December, 2008 the Department received income verification for Respondent covering the period January, 2006 through July, 2006.
- (4) In December, 2008 a Department recoupment specialist determined that Respondent was not financially eligible for Food Assistance Program (FAP) benefits during the period January, 2006 through April, 2006.

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).

There are evidentiary deficiencies in the Department’s case. Respondent was placed on the simplified reporting program for Food Assistance Program (FAP) benefits. No evidence was presented by the Department regarding what Respondent’s reporting responsibilities were or whether Respondent “was clearly and correctly instructed regarding his or her reporting responsibilities.” Department policy states:

Simplified Reporting groups are required to report **only** when the group’s actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. **No** other change reporting is required.

There is no clear and convincing evidence in the record that shows Respondent was informed what the group’s income limit was. In light of the unanswered question on whether Respondent knew or understood when she was required to report a change, there is insufficient evidence in the record to determine whether Respondent’s failure to report the employment change was intentional.

While the evidence shows there was an over-issuance, it does not establish the Respondent committed an intentional program violation.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that Respondent committed an intentional program violation.

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

Date Signed: February 16, 2010

Date Mailed: February 18, 2010

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.

cc:

