

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.: 2009-33617

Issue No.: 3055/1052

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

November 25, 2009

Wayne County DHS (15)

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on November 25, 2009. The 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). [REDACTED], OIG representative appeared on behalf of the Department.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether the respondent received an overissuance of benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds a material fact:

1. 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 IPV. The OIG also requested that respondent be disqualified from receiving program benefits.

2. Respondent was a recipient of FAP benefits during the period of 9/1/2006 through 4/30/2007.
3. Respondent was aware of the responsibility report a change in residency and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
4. Respondent did not report change of residency in a timely manner.
5. Respondent received dual assistance with the State of Louisiana during the same period.
6. As a result of the failure to report change of residency and receiving dual assistance, respondent committed an IPV and received an overissuance of benefits.
7. As a result, respondent received overissuances in the amount of \$4,108.00 under the FS/FAP program.
8. The Department has established that respondent committed an IPV.
9. This was respondent's first Intentional Program Violation.
10. A notice of disqualification hearing was mailed to respondent at the last known address.
11. The Department's request for hearing as it pertains to FIP was mailed to respondent at the last known address and was returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

The Food Assistance Program, 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"), formally known as the Family Independence Agency, administers the

FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over issuance (OI). PAM 700, p. 1. DHS must inform clients of their reporting responsibilities and prevent OIs by following PAM 105 requirements informing the client of the requirement to promptly notify DHS of all changes in circumstances within 10 days. PAM 700, PAM 105. Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.

An Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM 720, p. 1. The Federal Food Stamp regulations read in part:

(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).

For FAP, the IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 720, p. 2. The amount of the OI is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. PAM 720, p. 6.

In the present case, the Department has established that respondent was aware of the responsibility to report change in residency and not receive dual assistance and had no apparent limitations to fulfilling this requirement. The respondent failed to report change in residency and

received dual assistance. As a result, respondent committed an IPV and was overissued FS/FAP. Under the aforementioned policy, respondent is to be disqualified from the FAP/FS programs for a period of ten (10) years.

In the present case, the Department requested an Intentional Program Violation hearing for FIP benefits respondent had received. However, administrative rules relating to FIP benefits do not authorize an Intentional Program Violation Disqualification hearing if the Notice of Hearing is returned by the post office as undeliverable. MAC R 400.3130(5).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent committed an IPV with regard to the FAP program and received overissuances in program benefits.

It is ORDERED that respondent be disqualified from the FAP program for a period of 10 years. It is further ORDERED that the Department recoup for overissuances in FAP benefits in the amount of \$4108.00.

It is further ORDERED that the Department's request for disqualification hearing for FIP overissuances is dismissed without prejudice.



Aaron McClintic
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/14/09

Date Mailed: 12/14/09

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.

2009-33617/AM

AM/jlg

cc:

