

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: 2009-12858
Issue No: 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 13, 2009
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 May 13, 2009. 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 January 1, 2002, through July 31, 2003.

- 2) On December 18, 2002, respondent filed a DHS-1171; this was not her first request for assistance.
- 3) Respondent severely under reported her rate of pay on this application.
- 4) Some time in 2003, a wage match was run on respondent, and it was determined that her actual rate of pay did not match her reported rate of pay.
- 5) This amount was not verified until 2007, when a list of all paychecks for the time period in question was obtained by the Department.
- 6) These paychecks revealed that respondent was making significantly more income during a time period, starting in January 2002, than had been budgeted.
- 7) The Department did not submit into evidence a DHS-1171 with regard to respondent's reported income for the 2002 benefit year; the only DHS-1171 submitted was dated December 18, 2002.
- 8) Respondent was aware of the responsibility to report all employment and income to the department.
- 9) On December 30, 2008, 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 returned by the U.S. Post Office as undeliverable. Respondent's last known address is: [REDACTED]
[REDACTED].

- 11) OIG Agent James Linaras 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 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:

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. PAM, 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 defrauding the Department with regard to the FAP program.

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 in December, 2002 that her income was \$10/hour, and that she worked, on average, between 35-40 hours per week. Respondent also presented verifications that purported to show that respondent was making exactly what she stated she was making. Had the respondent received a raise after her report and she had not reported the income, 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, respondent's actual pay records, obtained by Agent Linaras in 2007, paint a very different picture. Contrary to respondent's assertions that she was making \$10/hour in December, 2002, they show that respondent was making \$14/hour since September, 2002, and had been making \$12/hour in the months before that. Furthermore, this record of her actual pay amount gives lie to the verifications respondent provided to the Department; the verifications that respondent provided prior to her redetermination application were clearly false. Respondent reported false information 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 increase her FAP benefits—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 December 18, 2002 application.

It should be noted, however, that the Department has failed to submit any evidence of a falsehood or misreporting prior to this date; the Department is requesting recoupment for a period beginning in January, 2002; the only application the Department has submitted is in

December 2002. While the undersigned feels that the respondent obviously misled the Department starting in December, 2002, there is no evidence that the respondent misled or failed to report her income prior to that date.

As there is no evidence of a misreporting of information before this date, the Administrative Law Judge must take this lack of evidence in a light most favorable to the respondent. While the pay records, submitted as Department Exhibit 7, combined with the issuance budgets, show that the respondent received an overissuance of benefits for the year 2002 benefit period, the Administrative Law Judge cannot conclude that this was due to IPV, or even client error, without evidence that shows that the respondent misreported or told the Department the wrong information. Therefore, for the period of time from January, 2002, through November, 2002, the undersigned, due to the lack of evidence, must assume that respondent did report, and apply all deductions as with a budget overissuance due to agency error.

Furthermore, after reviewing Department Exhibit 9, the program issuance budgets, the undersigned disagrees with the amount that the Department is lawfully entitled to recoup, even during the months the respondent was committing an IPV. The undersigned is unsure how the baseline numbers were reached, but they disagree with the actual pay numbers provided by Agent Linaras. Thus, the undersigned has reviewed the budgets and recalculated accordingly:

1. For the month of January, 2002, the Department calculated that the overissuance amount was \$235 in FAP allotments; the undersigned finds that the correct overissuance amount is \$235, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.
2. For the month of February, 2002, the Department calculated that the overissuance amount was \$235 in FAP allotments; the undersigned finds that the correct

overissuance amount is \$235, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.

3. For the month of March, 2002, the Department calculated that the overissuance amount was \$235 in FAP allotments; the undersigned finds that the correct overissuance amount is \$235, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.
4. For the month of April, 2002, the Department calculated that the overissuance amount was \$235 in FAP allotments; the undersigned finds that the correct overissuance amount is \$235, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.
5. For the month of May, 2002, the Department calculated that the overissuance amount was \$222 in FAP allotments; the undersigned finds that the correct overissuance amount is \$152, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.
6. For the month of June, 2002, the Department calculated that the overissuance amount was \$287 in FAP allotments; the undersigned finds that the correct overissuance amount is \$217, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.
7. For the month of July, 2002, the Department calculated that the overissuance amount was \$287 in FAP allotments; the undersigned finds that the correct overissuance amount is \$287, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.
8. For the month of August, 2002, the Department calculated that the overissuance amount was \$259 in FAP allotments; the undersigned finds that the correct

overissuance amount is \$183, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.

9. For the month of September, 2002, the Department calculated that the overissuance amount was \$274 in FAP allotments; the undersigned finds that the correct overissuance amount is \$198, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.
10. For the month of October, 2002, the Department calculated that the overissuance amount was \$300 in FAP allotments; the undersigned finds that the correct overissuance amount is \$254, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.
11. For the month of November, 2002, the Department calculated that the overissuance amount was \$264 in FAP allotments; the undersigned finds that the correct overissuance amount is \$185, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.
12. For the month of December, 2002, the Department calculated that the overissuance amount was \$184 in FAP allotments; the undersigned finds that the correct overissuance amount is \$140, after assuming agency error, factoring in the proper deductions, and consulting the proper issuance tables.

Beginning in January, 2003, the respondent is considered to have committed an IPV, and any unreported income is ineligible for the 20% reported earned income deduction. PEM 500.

However, on respondent's DHS-1171 of December 18, 2002, it is important to note that respondent did report that she was working 35-40 hours per week at \$10/hour. Therefore, the Administrative Law Judge will hold that respondent did report \$1720 of monthly income to the Department; this figure is arrived at by multiplying \$10/hour by 40 hours in a week, by the 4.3

weeks in a month standard used by the Department in calculating FAP monthly income.

Furthermore, the Department penalized respondent in the former budgets by not allowing a heat and utility deduction, even though respondent was given this deduction in prior months.

Ostensibly, this was because respondent had not provided verifications of utilities. However, it is worth noting that the evidence in the file indicates that respondent was still living in the same location, and thus, was more likely than not still responsible for the same utilities. Given that no real evidence has been presented either way, and also given the relative age of this case, the undersigned will give respondent the benefit of the doubt with regard to her utility costs. This calculation gives us the following overissuance amounts:

1. For the month of January, 2003, the Department calculated that the overissuance amount was \$184 in FAP allotments; the undersigned finds that this amount was correct.
2. For the month of February, 2003, the Department calculated that the overissuance amount was \$184 in FAP allotments; the undersigned finds that the correct overissuance amount is \$135, after using a baseline of \$1720 in reported earned income and adding in a heat/utility deduction.
3. For the month of March, 2003, the Department calculated that the overissuance amount was \$184 in FAP allotments; the undersigned finds that the correct overissuance amount is \$118, after using a baseline of \$1720 in reported earned income and adding in a heat/utility deduction.
4. For the month of April, 2003, the Department calculated that the overissuance amount was \$184 in FAP allotments; the undersigned finds that the correct overissuance amount is \$136, after using a baseline of \$1720 in reported earned income and adding in a heat/utility deduction.

5. For the month of May, 2003, the Department calculated that the overissuance amount was \$184 in FAP allotments; the undersigned finds that the correct overissuance amount is \$149, after using a baseline of \$1720 in reported earned income and adding in a heat/utility deduction.
6. For the month of June, 2003, the Department calculated that the respondent did not have an overissuance; however, the Administrative Law Judge, after comparing actual income from Department Exhibit 7, and running a budget using these numbers and a baseline reported income of \$1720 and factoring in all deductions, determines that the respondent was overissued benefits in the amount of \$158.
7. For the month of July, 2003, the Department calculated that the respondent did not have an overissuance; however, the Administrative Law Judge, after comparing actual income from Department Exhibit 7, and running a budget using these numbers and a baseline reported income of \$1720 and factoring in all deductions, determines that the respondent was overissued benefits in the amount of \$158.

Therefore, the undersigned finds that the correct amount that the Department may recoup in improperly issued FAP benefits is \$3594.

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 \$3594.00.

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.



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

Date Signed: 10/29/09

Date Mailed: 10/30/09

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.

RJC/dj

cc:

