

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

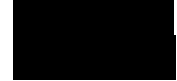


Respondent

Reg. No: 2009-14994

Issue No: 3055; 1052

Case No:



Load No:

Hearing Date:

May 13, 2009

Isabella 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 and FIP benefits during the period of 8-1-06 through 9-30-06.
- 2) On 6-5-05, respondent completed a DHS-1171, Application for Assistance, in which she stated that her children were members of the household.
- 3) In August 2006, respondent requested SER help and again listed her children as members of the household.
- 4) On 8-28-06, respondent's caseworker spoke with a member of the CPS unit, who advised that respondent had kicked her children out of the house at least 30 days before.
- 5) Respondent received FAP and FIP benefits during this time.
- 6) On respondent's recoupment notice, it is stated that respondent has a mental impairment.
- 7) Respondent was receiving SSI at the time, presumably for the same mental impairment.
- 8) On 10-14-08, 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.
- 9) 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: [REDACTED]
- 10) OIG Agent Brian Siegfried represented the Department at the hearing; respondent did not appear.

- 11) 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).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. 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, or withheld information, **for the purpose of defrauding the Department**, with regard to the FAP program.

In this case, the Department has not established that respondent was probably aware of the responsibility to report all income and employment to the department. Respondent apparently has a mental impairment; it is unknown the extent of this impairment. However, respondent was receiving SSI for this impairment, which gives us some indication that it was a serious one. The Department was unable to provide any insight into the issue, and the Department has the burden of proof in showing that the respondent had the mental capacity to understand the reporting obligations. Given the stakes in the current case and the apparent history that of the respondent that can be gleaned from the case file, the Administrative Law Judge would be uncomfortable in holding that the respondent was perfectly aware and understood her reporting obligations. Therefore, the undersigned cannot find by clear and convincing evidence that respondent committed an IPV.

This is not to say that there was no error in this case. Respondent still received benefits that she was not entitled to. That being said, the undersigned has found errors in the Department's math.

The undersigned sees no error in the FIP computation; if respondent's children were outside the home during the period in question, respondent was not eligible for FIP. Therefore the Department may recoup the full requested amount for FIP benefits.

However, with regard to respondent's FAP benefit amount, the Department has requested that respondent pay back \$494 in FAP allotments. This account was arrived at by starting with a base income of respondent's SSI award and respondent's FIP grant. However, as stated above, the Administrative Law Judge has determined that the respondent was not entitled to any FIP grant monies, and will have to pay this amount back. The Department may not have its cake and eat it too; if respondent was ineligible for an FIP grant during this time period, and if the

Department is allowed to recoup this amount, then effectively speaking, it will be like the respondent never received the FIP grant. However, the attached budgets assume that respondent did receive an FIP grant in its FAP allotment determination. This is incorrect. The Department may not recoup the FAP grant as if the claimant was entitled to FIP.

Using revised calculations, the undersigned has determined that respondent's actual gross income was \$556. After applying the appropriate deductions, respondent's adjusted gross income is \$431. After applying the shelter deduction, respondent's new net income is \$0. The FAP grant for a client with \$0 in income in August and September 2006 was \$152. Respondent actually received \$347. Therefore, the amount of overissuance per month was \$195. The overissuance continued for two months, according to Department testimony, so the full amount of recoupment for the FAP program shall be \$390. The Department may recoup this client error.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that respondent committed an Intentional Program Violation of the FAP and FIP programs. However, the respondent did receive \$544 in FIP benefits and \$390 in FAP benefits she was not eligible for.

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 8, 2009

Date Mailed: July 8, 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.

RJC/cv

cc:

