

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: 2009-16257
Issue No: 4052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 13, 2009
Eaton 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 appear at the hearing.

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 SDA benefits during the period of 3-1-08 through 7-31-08.

- 2) Respondent had been receiving SDA for a period of time dating before September, 2007 because she was a member of the MRS program, per PEM 261.
- 3) Sometime during late 2007 or early 2008, respondent dropped out of the MRS program.
- 4) Respondent dropped out of the MRS program because respondent needed to progress with completing her high school education before she could make strides in vocational rehabilitation.
- 5) Respondent was under the impression that this would be told to DHS by MRS, and that she would still be eligible for SDA benefits as long as she was attending the high school classes.
- 6) MRS did not notify DHS that respondent had dropped out of the program.
- 7) Respondent continued to receive SDA checks.
- 8) On 6-20-08, respondent went through her annual redetermination.
- 9) During this redetermination, the caseworker became aware that respondent had not been active in the MRS program since 1-4-08.
- 10) Respondent became angry at this interview when she was told that she would have to pay back any benefits she had received, ostensibly because she felt that the agency had made the mistake.
- 11) Respondent has an unspecified learning disability that has resulted in some reading and comprehension issues. Respondent was attending MRS to get assistance in dealing with these issues.
- 12) On 1-29-09, 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.

13) 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

14) OIG Agent Laura Davis represented the Department at the hearing; respondent appeared and brought along her mother, [REDACTED] as a witness.

15) This is respondent's first alleged IPV.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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.

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 undersigned remains unconvinced that Department has established that respondent was probably aware of the responsibility to report all income and employment to the department. Respondent, by all accounts, has some reading and comprehension issues; this was testified to by respondent's mother, whom the Administrative Law Judge generally found to be a credible witness. Furthermore, respondent was a member of the MRS program for those very issues. Finally, interactions at the hearing revealed the respondent to be erratic and inconsistent; while this may sometimes point to a respondent who is not being entirely truthful, in the current case, the undersigned felt respondent's behavior and answers to be in line with a typical person who experiences difficulty understanding issues like a duty to report. The Administrative Law Judge would state for the record that this decision in no way reflects whether the respondent actually understood her obligations—only that he does not believe the Department met its burden of proof in showing that respondent was fully aware, especially given the fact that respondent was attending MRS in order to achieve assistance in overcoming her particular issues.

It should be noted however, that respondent's ability to understand her obligations was by no means the deciding factor in this case; the undersigned is also not convinced that the

Department has met its burden of proof in providing clear and convincing evidence that the respondent intended to defraud the Department with regard to her SDA eligibility.

The burden of proof that the Department must meet in order to prove Intentional Program Violation is very high. It is not enough to prove that the respondent was aware of the requirements to report at some point, nor is it enough to prove that the respondent did not report in a timely manner. The Department must prove in a clear and convincing manner, that, not only did the respondent withhold critical information, but that the respondent withheld this information with the intent to defraud the Department. In other words, the Department must prove that the respondent did not simply forget to meet their obligations to report, but rather, actively sought to defraud the Department.

The Department has not proven that in the current case. Respondent testified that she had been told by her MRS contact that MRS would contact the Department to tell the Department that respondent was no longer active with MRS. This would be consistent with normal Department operations; previous experience has revealed to the undersigned that MRS has particular forms for notifying the Department when a client leaves MRS, either voluntarily or involuntarily. While respondent did still keep receiving checks, respondent testified that she thought she was supposed to be receiving checks while she completed her high school education. The Administrative Law Judge feels that this statement was fairly credible, in light of witness testimony. Furthermore, respondent did report at her redetermination, and was angry when she found out she would have to repay the benefits for what she felt was a Department error; the Administrative Law Judge feels that this also lends credibility to the argument that respondent lacked the requisite intent.

This is not to say that the undersigned found respondent entirely credible, and concedes that it is entirely possible that respondent was cashing the benefits with the idea that the Department had made a mistake in her favor; however it is important to remember that “possible” is an evidentiary threshold far below “clear and convincing”. Clear and convincing evidence requires something more, some piece of evidence that clearly elevates respondent’s actions from a mere failure to report an income change into something clearly malicious. This does not require evidence that proves maliciousness and intent beyond a reasonable doubt, but something more is required nonetheless. In the current case, all the Department has proven is that respondent did not report. There is no evidence that clearly supports a finding that there was intent to defraud the Department.

That being said, even if there was a clear intent to keep the checks and hope the Department didn’t catch on, the Administrative Law Judge is also not convinced that this would override the fact that this case seems to be a clear example of agency error. PAM 705 states that an example of agency error is:

Information was not shared between department divisions (services staff, Work First! agencies, etc.).

MRS is an example of a Department division, just as Work First/JET agencies are. DHS often works very closely with MRS, and information is shared frequently and consistently. As stated, the undersigned has frequently seen specific forms that are to be used to report to the Department when a client has left the MRS program. Had respondent been noncompliant with MRS activities and stopped going while receiving a cash grant, MRS would have reported respondent to her caseworker at DHS, just as if the noncompliance had been with Work First. Respondent’s work with MRS is taken into account when determining what types of grants she receives from the Department; therefore, the undersigned cannot fathom why MRS did not report

to the Department that respondent's case had closed. Department policy clearly states that a failure to share information—in this case, that respondent no longer participated with MRS—is an agency error, not a client error, and certainly not an IPV. Therefore, the Administrative Law Judge finds that this case was brought about directly by agency error, and therefore, any speculation into the mental state of the respondent, subsequent to this error, is mere academic speculation.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that respondent committed an Intentional Program Violation of the SDA program. Furthermore, the Administrative Law Judge holds that any error in this case was a result of Agency Error.

The Department is ORDERED to process any recoupment as would be consistent with the policies found in PAM 705, Agency Error Overissuances.

/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:

