

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: 200917607

Issue No: 3055; 1052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 29, 2009

Wayne 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 July 29, 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 FIP and FAP benefits during the period of October 1, 2000 through August 31, 2001.
- 2) On September 6, 2000, Respondent filed a DSS-8207, requesting Food Stamp Benefits in the State of [REDACTED].
- 3) On November 17, 2000, Respondent filed a DHS-1171, requesting FIP and FAP benefits in the State of Michigan.
- 4) On August 7, 2001, Respondent filed a DSS-8207, requesting Food Stamp Benefits in the State of [REDACTED].
- 5) Respondent was receiving concurrent benefits in the states of [REDACTED] and Michigan during the period of October 1, 2000 through August 31, 2001.
- 6) On February 18, 2009, 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.
- 7) 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.
- 8) OIG Agent [REDACTED] represented the Department at the hearing; Respondent did not appear.
- 9) 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 Bridges 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).

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 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:

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 committing an IPV**, 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 and FIP 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 proven that in the current case. Respondent applied for, and received, Food Stamp Benefits from the State of [REDACTED] on September 6, 2000. Respondent applied for, and received, FIP and FAP benefits in the State of Michigan on November 17, 2000. Then, upon her redetermination in [REDACTED] on August 7, 2001, Respondent re-applied for, and again received, Food Stamp Benefits, all while still collecting FIP and FAP benefits in Michigan.

Respondent told the Department in November of 2000 that she had not received benefits from another state in the last 30 days, which the Department has proved through clear and convincing evidence not to be true. She also told the Department that she and her household intended to stay in Michigan. Had the Respondent not already began receiving benefits in [REDACTED]

██████████, the underlying issue would have been merely a failure to report prior residency, and the Administrative Law Judge would admit that there would be doubts as to whether the Respondent intentionally meant to mislead the Department, or mis-communicated information on her application.

However, Respondent's application for FIP and FAP benefits in Michigan, as presented by the Department, paints a very different picture. Respondent's application shows that she began receiving benefits in ██████████ on September 6, 2000, just more than two months before beginning to collect benefits in Michigan. For the next year, Respondent collected and used the benefits from both states concurrently. Then, in August of 2001, Respondent failed to report her change in address to her case worker in ██████████ in an attempt to continue to receive benefits for which she was not eligible. Respondent therefore 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 defraud the Department—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 November 17, 2000 application. The Department may recoup improperly issued FIP and FAP benefits in the amount of \$8,828.00.

Finally, BAM 720 states that a respondent who has been found to have intentionally received concurrent benefits be disqualified from participation in the FIP and FAP program for the period of ten years. As the Administrative Law Judge believes the Department has proven with clear and convincing evidence that the Respondent committed an IPV for the purposes of


receiving concurrent benefits, the Respondent shall be disqualified from the FIP and FAP programs for a period of ten years.

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 \$5,211.00 in FIP benefits and \$3,617.00 in FAP benefits.

Accordingly, the Respondent is disqualified from participation in the FIP and FAP program for a period of ten years.

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 13, 2010

Date Mailed: July 13, 2010

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/hw

cc:

