

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: 2009-18282

Issue No: 3055

Case No:



Load No:

Hearing Date:

June 10, 2009

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 (department) request for a disqualification hearing. After due notice, a hearing was held on June 10, 2009. Respondent did not appear.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether respondent received 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) On September 24, 2007, Respondent submitted an application for Food Assistance Program (FAP) benefits. Respondent marked the application to indicate he intended to stay in the State of Michigan. Respondent signed the application acknowledging his responsibility to

report any changes that would affect his eligibility. Respondent was issued Food Assistance Program (FAP) benefits through the State of Michigan from September 2007 through June 2008.

(2) Beginning September 29, 2007 and through June 10, 2008, all of Respondent's Electronic Benefit Card (EBT) transactions for Food Assistance Program (FAP) benefits through the State of Michigan occurred in the State of Utah.

(3) Beginning in October, 2007 Respondent was also issued Food Assistance Program (FAP) benefits through the State of Utah. Records in evidence specifically show Food Assistance Program (FAP) benefits were issued through the State of Utah in October, November, and December 2007.

(4) Beginning June 15, 2008, all of Respondent's Electronic Benefit Card (EBT) transactions for Food Assistance Program (FAP) benefits through the State of Michigan occurred in the State of New Hampshire.

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:

PAM 720 INTENTIONAL PROGRAM VIOLATION

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and overissuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment. [PAM 700](#) explains OI discovery, OI types and standards of promptness. [PAM 705](#) explains agency error and [PAM 715](#) explains client error.

DEFINITIONS

All Programs

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.

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.

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV

FIP, SDA and FAP

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

Clear and convincing evidence is evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

One of the requirements to receive Food Assistance Program (FAP) benefits through the State of Michigan is to be a resident of Michigan. In light of the facts, Respondent’s assertion that he intended to stay in Michigan was fraudulent.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides the following:

- (1) Respondent committed an intentional program violation by making a false statement on his assistance application dated September 24, 2007, in order to receive Food Assistance Program (FAP) benefits through the State of Michigan. Respondent also intentionally failed to report his change of residency to Utah in order to continue receiving Food Assistance Program (FAP) benefits through the State of Michigan that he was not eligible for.

(2) Respondent was over-issued Food Assistance Program (FAP) benefits through the State of Michigan between September 24, 2007 and June 30, 2008, in the amount of \$1,494. The Michigan Department of Human Services is entitled to recoup the \$1,494 over-issuance.

(3) Respondent simultaneously received Food Assistance Program (FAP) benefits through the State of Michigan and the State of Utah during October, November, and December 2007.

/s/

Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 25, 2009

Date Mailed: June 26, 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.

GFH 

cc: 