

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: 2009-20658
Issue No: 3055, 1052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 28, 2009
Gladwin County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 October 28, 2009. Respondent personally appeared and testified along with his son [REDACTED].

ISSUE

1. Whether respondent committed an IPV on the Food Assistance Program (FAP) and whether respondent received an overissuance of benefits that the department is entitled to recoup?
2. Whether respondent committed an IPV on the Family Independence Program (FIP) 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. Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of FAP and FIP 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.

2. Respondent signed Assistance Application (1171) on May 29, 2008, acknowledging that he understood his failure to give timely, truthful, complete and accurate information about his circumstances and household income could result in a civil or criminal action or an administrative claim against him. (Department's Exhibit 1).

3. Respondent updated his May 29, 2008 application on September 9, 2008 claiming that his 17 year old son [REDACTED] was living with him. Respondent's caseworker made an entry in the Notes section of the application quoting the respondent as saying his son has enlisted in the [REDACTED] and is not going back to school, but won't leave until between now and January, 2008. Respondent and his son needed to be assigned to Work First/JET program.

4. Respondent received FIP and FAP benefits starting September 1, 2008 for himself and his son. On September 22, 2008 respondent called his caseworker and told her he did not call Work First/JET program as required, and that his son is currently in another state visiting relatives. (Department's Exhibit 2).

5. Respondent's FIP case was closed at the end of October, 2008, but he continued to receive FAP benefits for himself and his son. Respondent was however involved with

Children's Services as he had an infant son in foster care. In an e-mail from January 21, 2009 Children's Services worker notes that [REDACTED] stated that [REDACTED] has lived with her in [REDACTED] for over one year and not with the respondent. (Department's Exhibit 3).

6. OIG Agent spoke with [REDACTED] on February 11, 2009 and she stated that her son [REDACTED] has not been in Michigan since July, 2008. [REDACTED] further explained that she and [REDACTED] came to [REDACTED] in May, 2008 to see her daughter graduate, that [REDACTED] stayed in Michigan to visit his sister and father, the respondent, and that [REDACTED] returned to [REDACTED] in July, 2008 on a bus. Furthermore, [REDACTED] also went to [REDACTED] in November, 2008 to visit another sister. (Department's Exhibit 29).

7. Respondent and his son testified that the son was indeed living with him. Following the hearing OIG Agent provided a copy of the Findings and Opinion from Family Division of Bay County Circuit Court for a session of July 15, 2009. This court decision pertains to respondent's attempts to not have his parental rights terminated to an infant son.

8. The decision cites telephone testimony of respondent's son [REDACTED] saying he has been living with his mother in [REDACTED] school year, that he was in Michigan for couple of months in the summer of 2008 to visit his father, and that he then moved around until the day of his testimony when he was discovered at his brother's home in [REDACTED].

9. Respondent was interviewed by OIG on February 20, 2009 and claimed he reported to the department that his son [REDACTED] had left the state in September, 2008. Respondent's FIP case was terminated not due to his reporting that [REDACTED] had left the state permanently, but because of Work First/JET noncompliance.

10. Respondent ineligibly received \$871.00 in FAP benefits from September 1, 2008 thru February 28, 2009, and \$804.00 in FIP benefits from September 1, 2008 thru October 31, 2008, as a result of his false claim that his son [REDACTED] was residing with him.

11. Respondent was clearly instructed and fully aware of her responsibility to report all household income to the department.

12. Respondent was physically and mentally capable of performing her reporting responsibilities.

13. Respondent has not committed any previous intentional FAP and FIP program violations.

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:

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). PAM, Item 700, p. 1.

Definitions

The **Automated Recoupment System (ARS)** is the part of CIMS that tracks all FIP, SDA and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for active programs.

A **claim** is the resulting debt created by an overissuance of benefits.

The **Discovery Date** is determined by the Recoupment Specialist (RS) for a client or department error. This is the date the OI is known to exist and there is evidence available to determine the OI type. For an Intentional Program Violation (IPV), the Office of Inspector General (OIG) determines the discovery date. This is the date the referral was sent to the prosecutor or the date the OIG requested an administrative disqualification hearing.

The **Establishment Date** for an OI is the date the DHS-4358A-D, Repay Agreement, is sent to the client and for an IPV, the date the DHS-4357 is sent notifying the client when the disqualification and recoupment will start. In CIMS the "establishment date" has been renamed "notice sent date."

An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold).

Overissuance Type identifies the cause of an overissuance.

Recoupment is a DHS action to identify and recover a benefit OI. PAM 700, p. 1.

PREVENTION OF OVERISSUANCES

All Programs

DHS must inform clients of their reporting responsibilities and act on the information reported within the Standard of Promptness (SOP).

During eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities, including:

- . Acknowledgments on the application form, **and**
- . Explanation at application/redetermination interviews, **and**
- . Client notices and program pamphlets.

DHS must prevent OIs by following PAM 105 requirements and by informing the client or authorized representative of the following:

- . Applicants and recipients are required by law to give complete and accurate information about their circumstances.
- . Applicants and recipients are required by law to promptly notify DHS of all changes in circumstances within 10 days. FAP Simplified Reporting (SR) groups are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size.
- . Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.
- . A timely hearing request can delete a proposed benefit reduction.

INTENTIONAL PROGRAM VIOLATION

DEFINITIONS

All Programs

Suspected IPV

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).

The federal Food Stamp regulations read in part:

(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).

IPV

FIP, SDA AND FAP

IPV exists when the client/AR is determined to have committed an Intentional Program Violation by:

- . A court decision.
- . An administrative hearing decision.
- . The client signing a DHS-826, Request for Waiver of Disqualification or DHS-83, Disqualification Consent Agreement, or other recoupment and disqualification agreement forms. PAM, Item 720, p. 1.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 720, p. 2.

OVERISSUANCE AMOUNT

FIP, SDA, CDC and FAP Only

The amount of the OI is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. PAM 720, p. 6.

IPV Hearings

FIP, SDA, CDC, MA and FAP Only

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings for cases when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**

The total OI amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1,000 or more, **or**

- . The total OI amount is less than \$1,000, **and**
 - .. The group has a previous IPV, **or**
 - .. The alleged IPV involves FAP trafficking, **or**
 - .. The alleged fraud involves concurrent receipt of assistance (see PEM 222), **or**
 - .. The alleged fraud is committed by a state/government employee.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained. PEM, Item 720, p. 10.

DISQUALIFICATION

FIP, SDA and FAP Only

Disqualify an active **or** inactive recipient who:

- . is found by a court or hearing decision to have committed IPV, **or**
- . has signed a DHS-826 or DHS-830, **or**
- . is convicted of concurrent receipt of assistance by a court, **or**
- . for FAP, is found by SOAHR or a court to have trafficked FAP benefits.

A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. PAM 720, pp. 12-13.

Standard Disqualification Periods

FIP, SDA and FAP Only

The standard disqualification period is used in all instances except when a **court** orders a different period (see **Non-Standard Disqualification Periods**, in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- . One year for the first IPV
- . Two years for the second IPV
- . Lifetime for the third IPV

FIP and FAP Only

- . Ten years for concurrent receipt of benefits (see PEM 203). PAM 720, p. 13.

In this case, the department has established that respondent was aware of the responsibility to report all of his circumstances accurately to the department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Respondent falsely claimed that his son [REDACTED] was living with him, and received FIP and FAP benefits for him as a result of false reporting. Respondent's testimony supported by his son is that [REDACTED] indeed lived with him. However, this testimony is not credible as [REDACTED] testified at respondent's court hearing pertaining to his infant son under oath that he had not lived with his father and only visited him in the summer of 2008. Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that respondent committed a first intentional violation of the FAP in the amount of \$871 from September 1, 2008 thru February 28, 2009, and FIP of \$804.00 from September 1, 2008 thru October 31, 2008. Consequently, the department's request for FAP and FIP program

disqualification and full restitution for the FAP and FIP overissuance must be granted for these periods of time.]

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed a first intentional FAP and FIP program violation for the periods of time from September 1, 2008 thru February 28, 2009 and September 1, 2008 thru October 31, 2008, respectively.

Therefore it is ORDERED that:

1. Respondent shall be personally disqualified from participation in the FIP and FAP program for one year, but the rest of the household may participate. This disqualification period shall begin to run immediately as of the date of this Order.
2. Respondent is responsible for full restitution of the \$871.00 FAP and \$804.00 FIP overissuance caused by his Intentional Program Violation (IPV).

/s/ _____

Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 19, 2010

Date Mailed: April 19, 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.

cc:

