

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: 2009-20668
Issue No: 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2009
Genesee 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 1, 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 benefits during the period of 6-1-07 through 11-30-07.
- 2) On 3-22-07, respondent completed a DHS-1171, Application for Assistance, in which she stated that her husband was not currently employed, and was receiving unemployment benefits.
- 3) However, respondent did report her husband's prior job and noted that he was laid off from said job.
- 4) On 4-7-07, respondent's husband returned to work at [REDACTED] at an hourly rate of \$10.25.
- 5) Respondent notified the Department that her husband had returned to work.
- 6) The Department did not record this change of income, and subsequently, did not adjust respondent's FAP benefits.
- 7) In January, 2008, DHS ran a wage match on respondent when preparing for her annual FAP review, and discovered that respondent had unreported income since the initial redetermination application.
- 8) At an interview with the Office of Inspector General, respondent stated that her husband was seasonally employed and was frequently laid off. She further stated that she always called and at least left a message for her caseworker.
- 9) On 3-9-09, 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.

10) 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]

11) OIG Agent Kristin Kerr represented the Department at the hearing; respondent did not appear.

12) 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).

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 established that respondent was probably 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. However, the undersigned is 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 FAP 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 applied for, and received, FAP benefits on 3-22-07. Respondent husband was not working at the time. Respondent's husband did not start working until 4-7-07. Respondent's income was discovered upon her redetermination in January, 2008, upon a Department-run wage match.

While the undersigned admits that there is an argument that respondent avoided an obligation to report, if she didn't report, a possibility of something happening is far below the evidentiary threshold of "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, the Department has proven, at most, that respondent

did not report. There is no evidence that clearly supports a finding that there was intent to defraud the Department, versus a respondent who, for instance, simply forgot her obligation.

That being said, the undersigned is unconvinced that the Department has met its burden of proof in showing that the respondent has failed in her obligation to report changes. During a 12-18-08 interview, the Department reported that respondent told her caseworker that her husband was employed seasonally and frequently changed employment status. She also told the OIG that she had always called and left a message; this message was never acted upon by the Department. The Administrative Law Judge, in light of the quite common, and accurate, complaint that DHS officials either do not respond to phone messages or do not follow up on reported information, especially in the Genesee County branch, finds respondent's statements to the OIG completely credible. The undersigned finds it quite likely that the overissuance was a result of an agency mistake, given that the respondent's husband had held this job for a long period, and had successfully reported changes from the nature of seasonal employment consistently in the past.

Therefore, the Administrative Law Judge is willing to hold that any overissuance was a result of agency error, and should be recouped as though the respondent reported the income in question. PEM 556 allows a client to take a 20% deduction from reported earned income.

After factoring in the new income totals, the Administrative Law Judge has determined the following:

1. For the month of November, 2007, the Department calculated that the overissuance amount was \$286 in FAP allotments; the undersigned finds that the correct overissuance amount is \$158, after factoring in the 20% earned income deduction and consulting the proper tables.

2. For the month of October, 2007, the Department calculated that the overissuance amount was \$227 in FAP allotments; the undersigned finds that the correct overissuance amount is \$111, after factoring in the 20% earned income deduction and consulting the proper tables.
3. For the month of September, 2007, the Department calculated that the overissuance amount was \$230 in FAP allotments; the undersigned finds that the correct overissuance amount is \$127, after factoring in the 20% earned income deduction and consulting the proper issuance tables.
4. For the month of August, 2007, the Department calculated that the overissuance amount was \$350 in FAP allotments; the undersigned finds that the correct overissuance amount is \$223, after factoring in the 20% earned income deduction and consulting the proper issuance tables.
5. For the month of July, 2007, the Department calculated that the overissuance amount was \$144 in FAP allotments; the undersigned finds that the correct overissuance amount is \$41, after factoring in the 20% earned income deduction and consulting the proper issuance tables.
6. For the month of June, 2007, the Department calculated that the overissuance amount was \$350 in FAP allotments; the undersigned finds that the correct overissuance amount is \$272, after factoring in the 20% earned income deduction and consulting the proper issuance tables.

Therefore, the undersigned finds that the correct amount that the Department may recoup in improperly issued FAP benefits is \$932; PAM 705 states that the Department must recoup any amount over \$500 in the case of agency error. The undersigned finds that this recoupment is therefore proper.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that respondent committed an Intentional Program Violation of the FAP program. However, the respondent did receive \$932 in FAP benefits she was not eligible for. The Administrative Law Judge decides that this amount was issued as a result of agency error.

The Department is entitled to recoup the overissuance of benefits respondent ineligibly received. Respondent is ORDERED to reimburse the department for the overissuance, per the policy for agency error overissuance contained in PAM 705.

/s/ _____
Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 21, 2009

Date Mailed: September 21, 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:

