

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant,

Reg No: 2009-22077
Issue No: 3052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 19, 2009
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on August 19, 2009. The Respondent appeared and testified. Christopher Fector, OIG representative appeared on behalf of the Department.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether the respondent received an overissuance of benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds a material fact:

1. 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 IPV. The OIG also requested that respondent be disqualified from receiving program benefits.
2. Respondent was a recipient of FIP benefits during the period of 9/1/02 – 10/31/07.

3. Respondent was aware of the responsibility to report all employment and income to the department and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
4. Respondent did not report her household income in a timely manner.
5. Respondent reports that she received income from her great-grandmother payable to herself that she would use to do errands for her grandma.
6. As a result of the failure to report all household income, Defendant argues that respondent committed an IPV and received an overissuance of benefits in the amount of \$1,578.00 under the FS/FAP program.
7. The Department has established that respondent committed an IPV.
8. The Department has not established that respondent incurred an over issuance.
9. A notice of disqualification hearing was mailed to respondent at the last known address and was not returned by the US Post Office as undeliverable.
10. This was respondent's first Intentional Program Violation.

CONCLUSIONS OF LAW

The Food Assistance Program, 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"), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual ("PAM"), the Program Eligibility Manual ("PEM"), and the Program Reference Manual ("PRM").

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over issuance (OI). PAM 700, p. 1. DHS must inform clients of their

reporting responsibilities and prevent OIs by following PAM 105 requirements informing the client of the requirement to promptly notify DHS of all changes in circumstances within 10 days. PAM 700, PAM 105. Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.

An Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

PAM 720, p. 1. 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).

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


In the present case, the Department has established that respondent was aware of the responsibility to report all employment and income for persons living in the household and had no apparent limitations to fulfilling this requirement. A series of checks were issued to Claimant from the grandmother's bank account through Howard Patrick. (Exhibit 1, pp. 25-37). Claimant testified that these checks were issued to Claimant and then Claimant would use the money to run errands or shop for her grandmother. The Administrative Law Judge finds it credible that some of the money was used for this purpose. However, it is not credible that all the money, such as a check for \$3,000, would have been used without benefit to Claimant. As a result, the

respondent did commit an IPV but the amount of over issuance of FS/FAP benefits was not proved.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent did commit an IPV with regard to the FAP program. Accordingly, the respondent is disqualified from participation in the FAP program for a period of twelve (12) months.

However, the department has not established conclusively the amount that respondent received in overissuance of FAP benefits. Accordingly, the department's request for recoupment is DENIED.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 09/25/09

Date Mailed: 09/29/09

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.

JV/dj

cc:

