

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant,

Reg No: 2009-22174

Issue No: 3052

Case No: ██████████

Load No: ██████████

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 5/1/91 – 2/28/06
3. Claimant testified that she separated from her husband in September of 2005 a week or two after the birth of her son. Claimant was legally separated from her husband on [REDACTED]. Claimant testified that she reported to DHS that her husband moved out on 2/21/06.
4. Claimant signed a DHS 1046 on 9/10/2005 but hand delivered the 1046 on 10/2/05 due to the birth of her son.
5. Claimant and her husband then reunited for a period of time at the end of 2006.
6. Claimant's husband was found to have income from 9/19/05 – 5/8/07.
7. 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.
8. Respondent did not report her group composition and household income in a timely manner.
9. As a result of the failure to report all members in the group, Defendant argues that respondent committed an IPV and received an overissuance of benefits in the amount of \$1,000.00 under the FS/FAP program.
10. The Department has not established that respondent committed an IPV.
11. 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.
12. 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.

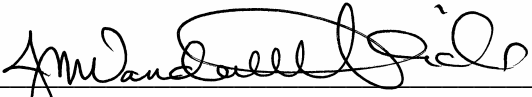
In the present case, the Department has established that respondent was aware of the responsibility to report all employment and income for persons living in the household and had no apparent limitations to fulfilling this requirement. The respondent testified credibly, however, that her husband was not living in her household for all but a couple weeks of the IPV period. Claimant turned in a DHS 1046 after her husband moved out, but it had already been signed a month before when her husband was still living in the household. Since Claimant had a baby during this time period, it is not surprising that Claimant did not realize the reporting error. Furthermore, Claimant did not actually receive her husband's income as the husband was not in the household and obtained his new employment after he moved out. As a result, the respondent did not commit an IPV and was not overissued FS/FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent did not commit an IPV with regard to the FAP program.

Furthermore, the department has not established that respondent received an overissuance of FAP benefits.

Accordingly, the department's request for disqualification and 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.

2009-22174/JV

JV/dj

cc:

