

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: 200922724

Issue No: 3055; 4052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 12, 2009

Saginaw 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 August 12, 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 and SDA benefits during the period of March, 2007 through July, 2007.

- 2) On February 27, 2007, respondent filed a DHS-1171 requesting FAP and SDA benefits.
- 3) Respondent reported on this application that he was not receiving employment income.
- 4) A Wage Match inquiry later revealed that respondent was employed and had been since July, 2006.
- 5) Respondent received regular paychecks until at least July, 2007.
- 6) Respondent was receiving FAP and SDA benefits during this time.
- 7) Respondent was aware of the responsibility to report all employment and income to the Department.
- 8) On April 8, 2009, 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.
- 9) 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].
- 10) OIG Agent Michelle Vasquez represented the Department at the hearing; respondent did not appear.
- 11) 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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or Department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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 for the purpose of committing an IPV.

In this case, the Department has established that respondent was 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. Furthermore, there is clear and convincing evidence that the respondent intended to mislead the Department with regard to her FAP and FIP eligibility.

Respondent told the Department in February of 2007 that he was not employed. Had the respondent started employment after he had filed his application and he had not reported the income, the underlying issue would have been merely a failure to report income, and the Administrative Law Judge would admit that there would be doubts as to whether the respondent intentionally meant to mislead the Department or had a simple lapse of memory.

However, respondent's employment record, as presented by the Department, paints a very different picture. Respondent's employment records show that he started his employment in July, 2006. This was before respondent filed for FAP benefits. Respondent therefore reported false information to the Department; this rises far beyond a memory lapse. It appears that the respondent actually produced and submitted false information for the Department. For that reason, the undersigned believes that this falsehood was clear and convincing evidence of intent to mislead the Department in an attempt to defraud the Department—an intentional program violation.

Therefore, as a result of the failure to report all income in a timely manner, respondent committed an IPV, and received an overissuance in benefits, starting with his February 27, 2007 application.

Finally, the agency is requesting recoupment amounts that include, in the corrected FAP budget, income respondent received from SDA benefits. As SDA benefits will be recouped, it would be improper to use this amount as part of respondent's unearned income. The Department may not recoup more benefits than it is rightly entitled to, and calculating a FAP budget using SDA amounts when that SDA amount is subject to recoupment, would be akin to double dipping from the recoupment.

Therefore, after reviewing Department Exhibit 10, the program issuance budgets, the undersigned disagrees with the amount that the Department is lawfully entitled to recoup. Thus, the undersigned has reviewed the budgets and recalculated accordingly:

1. For the months of April and May 2007, the Department's calculations were correct.
2. For the month of March, 2007, the Department calculated that the overissuance amount was \$145 in FAP allotments; the undersigned finds that the correct overissuance amount is \$155, after calculating the actual amount of income respondent received during the month, factoring in the proper deductions, and consulting the proper issuance tables. This new amount is because respondent should have been a non-categorical FAP recipient, as he was ineligible for SDA.
3. For the month of June, 2007, the Department calculated that the overissuance amount was \$145 in FAP allotments; the undersigned finds that the correct overissuance amount is \$76, after calculating the actual amount of income respondent received during the month, factoring in the proper deductions, and consulting the proper issuance tables.
4. For the month of July, 2007, the Department calculated that the overissuance amount was \$145 in FAP allotments; the undersigned finds that the correct overissuance amount is \$87, after calculating the actual amount of income respondent received during the month, factoring in the proper deductions, 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 \$576.

The Department may recoup improperly issued SDA benefits in the amount of \$1320.

Finally, as a result of the IPV, the Department properly requested that the respondent be disqualified from participation in the FAP and SDA program for the period of one year.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides that respondent committed an Intentional Program Violation of the FAP program, and the Department is entitled to recoup the overissuance of \$576.00 in FAP benefits and \$1320.00 in SDA benefits.

Accordingly, the respondent is disqualified from participation in the FAP and SDA program for a period of one year.

The Department is entitled to recoup the overissuance of benefits respondent ineligibly received. Respondent is ORDERED to reimburse the Department for the overissuance.



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

Date Signed: 05/28/10

Date Mailed: 06/04/10

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/dj

cc:

