

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: 2009-23939
Issue No: 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 2, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 September 2, 2009. Respondent did appear and provide testimony, along with his wife, Torneisha, through the use of a licensed sign language interpreter, [REDACTED].

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) on the Food Assistance Program (FAP) 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 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 an Assistance Application (DHS-1171) on May 25, 2005, acknowledging that she understood her failure to give timely, truthful, complete and accurate wage/employment information could result in a civil or criminal action or an administrative claim against her and the group members. The respondent reported only income for [REDACTED] through [REDACTED] (Department Exhibit 5, pages 18 - 25).

3. Respondent signed a Semi-Annual Contact Form (DHS-1046) on October 8, 2005 and indicated on this form that [REDACTED] was employed at [REDACTED], no other income was reported. (Department Exhibit 3, page 14 - 15).

4. Respondent completed another Semi-Annual Contact Report on April 17, 2006. Respondent again only reported that [REDACTED] was working at [REDACTED] (Department Exhibit 4, pages 16 - 17).

5. Respondent completed and signed another Assistance Application on June 27, 2006 and again reported the only income received by the program group was [REDACTED] income with [REDACTED] (Department Exhibit 6, pages 26 - 33).

6. On August 8, 2007, the department received an Employee Wage History which showed that the respondent [REDACTED] had been employed by [REDACTED], in addition to [REDACTED] from 2002 through the fourth quarter of 2007. This income had not been reported. (Department Exhibit 1, pages 9 - 11).

7. Respondent received \$11,163.00 in FAP benefits during the alleged fraud period of October, 2003 through November, 2006 (excluding the month of April, 2005, where there was

no overissuance). If the income had been properly reported and budgeted by the department, the respondent would only have been eligible to receive \$2251.00 in FAP benefits. (Department Exhibit 7, page 34).

7. Respondents failed to report [REDACTED] employment income from [REDACTED] [REDACTED] in a timely manner, resulting in a FAP overissuance for the months of October, 2003 through November, 2006, in the amount of \$8912.00. (Department Exhibit 7, page 34).

8. Respondents were clearly instructed and fully aware of their responsibility to report all household income to the department.

9. Respondents were physically and mentally capable of performing their reporting responsibilities.

10. Respondents have not committed any previous intentional FAP program violations.

11. A Notice of Disqualification Hearing was mailed to respondent at the last known address. Respondents did receive the notice. Respondent's last known address is: [REDACTED]

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:

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 income and employment to the department. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within ten days. PAM, item 105, p. 7. Both [REDACTED] are deaf. The respondents indicate that they did not always have an interpreter and may not have understood the department staff member. However, both respondents testified that they have no impairments in their reading abilities. The written Assistance Application and Semi-Annual Contact forms each explain the reporting requirements and responsibilities. Thus, even if the respondents failed to understand something the department staff member was explaining to them, they have no impairments in their reading and should have read the reporting responsibilities and requirements, which are presented each time a client signs an Assistance Application or Semi-Annual Contact form.

The respondent completed an application for assistance on May 25, 2005 and on June 27, 2006. On these applications, the respondent only indicated that [REDACTED] was working for [REDACTED]. In fact, [REDACTED] was also working for [REDACTED] at the time these applications were completed. The respondents failed to report his income from [REDACTED] [REDACTED] on either of these applications.

Further, the respondent completed Semi-Annual Contact forms on October 8, 2005 and April 17, 2006. These forms also clearly indicate that the client “**must** include current proof of all income your household received for the past 30 days.” At the time each of these Semi-

Annual Contact forms were completed. [REDACTED] was working at both [REDACTED] [REDACTED]. However, only the income from [REDACTED] was reported by the respondents.

This 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 program, resulting in a \$8912.00 overissuance from October, 2003 through November, 2006. Consequently, the department's request for FAP program disqualification and full restitution must be granted.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed a first intentional FAP program violation.

Therefore it is ORDERED that:

(1) Respondent shall be personally disqualified from participation in the FAP program for one year, but the rest of the household may participate, if eligible. This disqualification period shall begin to run immediately as of the date of this Order.

(2) Respondent is jointly and severally responsible with her husband for full restitution of the \$8912.00 FAP overissuance caused by her Intentional Program Violation (IPV).

/S/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 5, 2010

Date Mailed: April 6, 2010

2009-23939/SLK

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.

SLK [REDACTED]

cc:

[REDACTED]