

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: 200926126

Issue No: 3055

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 29, 2009

Lenawee 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 29, 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 November 1, 2006 through February 28, 2007.

- 2) On October 8, 2006, respondent began to use her benefits in other states.
- 3) Respondent continued to use her benefits in another state until February, 2007.
- 4) There is no evidence that the respondent changed her address, received a driver's license in the other states, applied for benefits in the other states, or moved to these other states with intent to reside there.
- 5) On April 23, 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.
- 6) A Notice of Disqualification Hearing was mailed to respondent at the last known address and was returned by the U.S. Post Office as undeliverable. Respondent's last known address is: [REDACTED].
- 7) OIG Agent Mike Wenner represented the Department at the hearing; respondent did not appear.
- 8) 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 intentionally withheld information with the intention to commit an IPV, with regard to the FAP program. Thus, the Department must not only prove that the respondent committed an act, but that there was intent to commit the act.

In this case, the Department has established that respondent was probably aware of the responsibility to report all changes 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. Furthermore, the undersigned is unconvinced that there was an error in this case.

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 commit an IPV. 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 September 6, 2006. The respondent's statement of benefits shows that the benefits were used out of state after that period. There is no indication that respondent applied for benefits while intending to live out of state or while living out of state.

While the undersigned admits that, given the amount of time respondent's benefits were used out of state, respondent possibly knew at some point that she should report and apply for residency in another state, it is important to remember that "possible" is an evidentiary threshold far below "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 a location 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, all the Department has proven is that respondent did not report. There is no evidence that clearly supports a finding that there was intent to commit an IPV, versus a respondent who, for instance, simply forgot her obligation.

This is of course, assuming that respondent had a requirement to report. In the current case, the Department has only provided one exhibit—a statement of where respondent's benefits were used—to show respondent's intent to move out of state. While it is true that respondent used her benefits in another state for several months, there is no evidence that respondent actually lived in the state in question, such as a driver's license, proof that the respondent was living in the other state, applications for benefits from the other state's agencies, or evidence of respondent's intent to stay in the state in question. The Department has provided no other evidence that respondent actually resided in the state in question.

PEM 220 does not set any particular standard as to when a person is residing in another state, nor does it state that the simple act of using food benefits in another state counts as residing

in that other state. Because there is no evidence that respondent was actually living in another state, the undersigned cannot hold that she was, and as such, decides that she lawfully received FAP benefits.

The MA portion of the hearing request is dismissed without prejudice because the notice of hearing was returned by the Post Office as undeliverable. MAC R 400.3130(5); PAM 720.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that respondent committed an Intentional Program Violation of the FAP program. Respondent received no FAP benefits that she was ineligible for.

The MA portion of the hearing is **DISMISSED** without prejudice.

Recoupment is **DENIED**.



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

Date Signed: 06/07/10

Date Mailed: 06/08/10

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/cv

cc:

