

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: 2009-26830
Issue No: 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 16, 2009
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 December 16, 2009. Respondent did not appear. In accordance with Program Administrative Manual (PAM) 720 the hearing proceeds without Respondent.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) 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) On May 14, 2004, Respondent signed an application for Food Assistance Program (FAP) benefits. Respondent's signature is his acknowledgment to report changes to the

Department of Human Services. Respondent began receiving Food Assistance Program (FAP) benefits.

(2) On September 9, 2004 through October 3, 2004 Respondent used his Food Assistance Program (FAP) electronic benefit card in Missouri.

(3) On September 29, 2004, a Department caseworker recorded that Respondent told her, he was moving to Kansas City for good in a couple of months.

(4) On October 22, 2004, a Department caseworker recorded that Respondent told her, he expected to stay in Michigan for 3 months before moving for good.

(5) On October 25, 2004 through November 7, 2004 Respondent used his Food Assistance Program (FAP) electronic benefit card in Michigan.

(6) On November 21, 2004 through January 11, 2005 Respondent used his Food Assistance Program (FAP) electronic benefit card in Missouri.

(7) On January 19, 2005 through January 20, 2005 Respondent used his Food Assistance Program (FAP) electronic benefit card in Michigan.

(8) On January 30, 2005 through June 16, 2005 Respondent used his Food Assistance Program (FAP) electronic benefit card in Missouri.

(9) On June 26, 2005 through July 9, 2005 Respondent used his Food Assistance Program (FAP) electronic benefit card in Michigan.

(10) On July 13, 2005 through September 26, 2005 Respondent used his Food Assistance Program (FAP) electronic benefit card in Missouri.

(11) On October 8, 2005 through October 12, 2005 Respondent used his Food Assistance Program (FAP) electronic benefit card in Michigan.

(12) On October 19, 2005, Respondent used his Food Assistance Program (FAP) electronic benefit card in Missouri.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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:

PAM 720 INTENTIONAL PROGRAM VIOLATION

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and overissuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

[PAM 700](#) explains OI discovery, OI types and standards of promptness. [PAM 705](#) explains agency error and [PAM 715](#) explains client error.

DEFINITIONS All Programs

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.

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.

FAP Only

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

IPV

FIP, SDA and FAP

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of

Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

Clear and convincing evidence is evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

