

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: 2009-27420
Issue No: 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 3, 2010
Calhoun 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 March 3, 2010. Respondent did not appear. This action was initially brought as intentional program violation's in the Food Assistance Program (FAP), Family Independence Program (FIP), and State Disability Assistance (SDA) program. The Notice of this hearing and evidence packet was returned by the US Post Office as not deliverable and unable to forward. In accordance with Program Administrative Manual (PAM) 720 a hearing on the Food Assistance Program (FAP) only 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 March 9, 2006, a felony warrant was issued for Respondent for welfare fraud.
- (2) On October 24, 2006, Respondent submitted an application for Food Assistance Program (FAP). Respondent incorrectly marked the application that no person in her benefit group was a fugitive felon. Respondent was not eligible for Food Assistance Program (FAP) benefits because of her fugitive felon status. Respondent began receiving Food Assistance Program (FAP) benefits in November, 2006
- (3) Between October 1, 2006 and August 31, 2007 Respondent was over-issued \$1,312 of Food Assistance Program (FAP) benefits.

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:

BEM 203 CRIMINAL JUSTICE DISQUALIFICATIONS

DEPARTMENT POLICY

FIP, SDA and FAP

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance.

Policy for IPV disqualifications and over-issuances is found in BAM 700 and 720.

FUGITIVE FELONS FIP, SDA, and FAP

A fugitive felon is a person who:

- Is subject to arrest under an outstanding warrant arising from a felony charge against that person (this includes persons charged with felony welfare fraud who fail to appear in court).
- Is subject to arrest under an outstanding warrant for extradition arising from a criminal charge against that person in another jurisdiction.
- Admits to being a fugitive felon.

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).

The evidence in this case clearly shows that Respondent was not eligible for any of the Food Assistance Program (FAP) benefits she received while she was in fugitive felon status.

Respondent incorrectly marked the October 24, 2006 assistance application that no one in her benefit group was a fugitive felon. In order to find that the incorrect information on the application was an intentional misrepresentation, evidence must be presented which shows that on October 24, 2006 Respondent knew there was a felony warrant for her arrest.

The warrant was issued [REDACTED] in St Joseph County. The warrant lists Respondent's address as [REDACTED]. Evidence in this record includes an application for Medical Assistance (MA) and State Disability Assistance (SDA) submitted on Respondent's behalf by L&S Associates on May 25, 2006. On the May 25, 2006, application Respondent's address is given as [REDACTED] Calhoun County. The October 24, 2006, application in this record lists Respondent's address as 105 Lathrop Ave, Battle Creek, MI, Calhoun County.

In this case, the record does not constitute clear and convincing evidence that Respondent knew she was fugitive felon on October 24, 2006, when she incorrectly marked the assistance application for Food Assistance Program (FAP) benefits.

DECISION AND ORDER

The Administrative Law Judge decides that the Department of Human Services has not established that Respondent committed an intentional program violation.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 17, 2010

Date Mailed: March 25, 2010

2009-27420/GFH

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.

GFH 

cc:

