

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2009-28050

Issue No: 3055

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a telephone hearing was held on November 4, 2009. The claimant appeared and provided testimony, by and through her attorney, Jacqueline Doig.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of 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. 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.
2. Respondent signed Assistance Application (DHS-1171) on September 10, 2007, acknowledging that she understood her failure to give timely, truthful, complete and accurate information about her circumstances could result in a civil or criminal action or an administrative claim against her. (Department Exhibit 19 - 27).

3. On this application, the respondent reported that she was on leave from [REDACTED] due to a pregnancy. The respondent informed the department staff member that she would return to work after having the child if there was a position available. The department verified the respondent went on leave on August 27, 2007. (Department Exhibit 23, 27)
4. On July 8, 2008, the department found via a Quarterly Wage Match report that the respondent had employment earnings from [REDACTED] during the first and second quarter of 2008. (Department Exhibit 29)
5. The respondent was mailed two Eligibility Notices (DHS-4400) on February 4, 2008 and on February 13, 2008. Both of these notices showed no earned income being budgeted for the respondent. (Department Exhibit 30 – 31)
6. On September 5, 2008, the department received a Verification of Employment (DHS-38) from respondent's employer. This form showed the respondent returned to work on January 28, 2008. (Department Exhibit 32 – 34)
7. Respondent received [REDACTED] in FAP benefits during the alleged fraud period of April 1, 2008 through May 31, 2008. If the income/hours had been properly reported and budgeted by the department, Respondent would not have been eligible to receive FAP benefits. (Department Exhibit 45 - 50).
8. Respondent was clearly instructed and fully aware of the responsibility to report all employment and income to the department.
9. Respondent has no apparent physical or mental impairment that would limit the understanding or ability to fulfill the income reporting responsibilities.
10. Respondent had not committed any previous intentional program violations of the FAP program. (Department Hearing Request).

CONCLUSION 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 department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the department has asked that the respondent be disqualified from receiving benefits. The department's manuals provide the following relevant policy statements and instructions for department caseworkers.

When a customer client group receives more benefits than they are entitled to receive, the department must attempt to recoup the overissuance. PAM 700. A suspected intentional program violation means an overissuance where:

- 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.

The department suspects an intentional program violation when the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility. There must be clear and convincing evidence that the client acted intentionally for this purpose. PAM 720.

The department's Office of Inspector General processes intentional program hearings for overissuances referred to them for investigation. The Office of Inspector General represents the department during the hearing process. The Office of Inspector General requests intentional program hearings for cases when:

- benefit overissuances are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
 - the total overissuance amount is \$1000 or more, or
 - the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed an intentional program violation disqualifies that client from receiving program 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.

Clients that commit an intentional program violation are disqualified for a standard disqualification period except when a court orders a different period. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. PAM 720. This is the respondent's first alleged intentional program violation.

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. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Respondent completed an application for assistance on September 10, 2007. The respondent reported that she was on leave from work due to a pregnancy, but reported to the department that she would return to work after the baby was born if a position was available.

The department representative, ■■■, testified that she spoke with the respondent on June 13, 2008. JN indicated that the respondent told her that she had not previously reported her earnings to the department because she needed the benefits because she couldn't afford essentials without the benefit money. While the respondent denied stating this to the department worker, the Documentation Record (DHS-223) that describes the conversation was made by the department worker at the time the telephone conversation occurred, which lends credence to the department worker's testimony.

The respondent testified that she does not dispute the overissuance (OI), only that the OI was as the result of an IPV. The respondent testified that she called the department at the end of January, 2008 to report that she was returning to work. The respondent further testified that she informed the department she did not need child care and was returning to work. However, the department introduced as evidence the written note that the respondent submitted to the department sometime in February, 2008. This note only states that the respondent will be off medical care the end of February, 2008 for complications related to the C-section and requested the Child Development and Care (CDC) benefits end on February 28, 2008. There is no mention that respondent had returned to work.

The respondent submitted several documents into evidence to attempt to show that she had informed the department about her return to work. The letters that the respondent wrote and submitted to the department (see claimant exhibits C – D) are date-stamped as received by the department on May 20, 2008 and May 29, 2008, respectively. No

evidence was presented to show that the respondent reported the income prior to May, 2008, which is when the department discovered that she had income.

In fact, the respondent admitted to receiving the two Eligibility Notices dated February 4, 2008 and February 13, 2008. Both of these notices show the department was not budgeting any income for the respondent. This should have alerted the respondent that the department did not have proof of her return to work and that her income had not been reported and included in the FAP budget.

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 [REDACTED] overissuance from April 1, 2008 through May 31, 2008. 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 above findings of fact and conclusions of law, decides that Respondent committed an Intentional Program Violation of the FAP program for the period of April 1, 2008 through May 31, 2008.

Therefore, the department is entitled to recoup the overissuance of benefits Respondent ineligibly received. Respondent is ORDERED to reimburse the department for the \$1084 FAP overissuance caused by her intentional program violation.

Respondent shall also be personally disqualified from participation in the FAP program for one year. This disqualification period shall begin to run immediately as of the date of this Order

It is SO ORDERED.

/s/ _____
Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 2/9/11

Date Mailed: 2/9/11

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.

[REDACTED]

[REDACTED]

[REDACTED]