

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: 2009-30010
Issue No: 1052, 3052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 13, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on January 13, 2010. 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). David Greenwald, OIG representative appeared on behalf of the Department.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether the respondent received an over-issuance of benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds a material fact:

1. The Department's Office of Inspector General (OIG) filed a hearing request to establish an over-issuance of benefits received by respondent as a result of

respondent having committed an IPV. The OIG also requested that respondent be disqualified from receiving program benefits.

2. Respondent was a recipient of FIP and FAP benefits during the period of 3/1/01 through 12/4/06.
3. Respondent was aware of the responsibility to report all income in the household to the department and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
4. Respondent began working in 2003 and did not report her income in a timely manner on the DHS 1171 of 4/20/04 and 3/15/05. (Exhibits 3-4).
5. As a result of the failure to report all required income, respondent committed an IPV and received an over-issuance of benefits.
6. As a result, respondent received over-issuances calculated by the Department in the amounts of \$4,297.00 under the FIP program and \$2,370.00 under the FAP.
7. The Department has established that respondent committed an IPV.
8. This was respondent's first Intentional Program Violation.
9. A notice of disqualification hearing was mailed to respondent at the last known address and was returned not by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

A. IPV

The Family Independence Program ("FIP") was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services administers the FIP program pursuant to MCL 400.10, *et seq.* and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children ("ADC") program effective October 1, 1996. Department policies are found in the

Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

The Food Assistance Program, 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”), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over issuance (OI). PAM 700, p. 1. DHS must inform clients of their reporting responsibilities and prevent OIs by following PAM 105 requirements informing the client of the requirement to promptly notify DHS of all changes in circumstances within 10 days. PAM 700, PAM 105. Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.

An Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM 720, p. 1. 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).

For FIP and FAP, the IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines there was an Intentional Program Violation. PAM 720, p. 1. 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.

In the present case, the Department has established that respondent was aware of the responsibility to report all income in the household and had no apparent limitations to fulfilling this requirement. The respondent failed to report her income on the DHS 1171 after she began working. As a result, respondent committed an IPV and was over-issued FIP and FAP benefits. Under the aforementioned policy, respondent is to be disqualified from the FIP and FAP programs for a period of twelve (12) months.

B. Recoupment

The federal regulations define household income to include all earned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. PEM 550. Under 7 CFR 273.9, as amended, \$125.00 is deducted from the gross income of FAP recipients in determining FAP grants. Unearned income includes FIP benefits, SSI payments for family members (PEM 500, p. 33) and child support (PEM 500, p. 10). Under 7 CFR 273.9 deductions for excess shelter are also made. PEM 554. Id. There is a standard heat and utility deduction as well as a standard deduction for telephone bills. Id. The standard deductions are a set amount that is applied regardless of the actual expenses incurred by the Claimant.

In the present case, the Department is attempting to recoup the amount paid in FIP benefits to the Respondent. The Department cannot recoup that money and then count the FIP payment against the Respondent in the FAP budget. Accordingly, the FAP budgets for October, 2005 through December, 2006 (located at Exhibit 1, pp. 69, 71, 76, 80 and 84) are incorrect.

1) October, 2005

According to the aforementioned policy on budgeting and excluding the FIP payment, Claimant's budget reveals a net monthly income of \$916.00. This was obtained by subtracting the standard deduction of \$125.00 and the maximum excess shelter amount of \$400.00 from the earned income of \$1441.00. The amount of food assistance allotment is established by regulations at 7 CFR 273.10. A household of two people with a net monthly income of \$916.00 is entitled to a monthly FAP grant of \$10.00 per month. PRT 260.

2) November & December, 2005

In this month, the Department records only evidence income from one source. According to the aforementioned policy on budgeting and excluding the FIP payment, Claimant's budget should show a net monthly income of \$627.00. This was obtained by subtracting the standard deduction of \$125.00 and the maximum excess shelter amount of \$400.00 from 80% of the earned income of \$1441.00. The amount of food assistance allotment is established by regulations at 7 CFR 273.10. A household of two people with a net monthly income of \$627.00 is entitled to a monthly FAP grant of \$89.00 per month. PRT 260.

3) January, 2006

According to the aforementioned policy on budgeting and excluding the FIP payment, Claimant's budget reveals a net monthly income of \$1,111.00. This was obtained by subtracting the standard deduction of \$125.00 and the maximum excess shelter amount of \$400.00 from the earned income of \$1636.00. The amount of food assistance allotment is established by regulations at 7 CFR 273.10. A household of two people with a net monthly income of \$1,111.00 is entitled to a monthly FAP grant of \$10.00 per month. PRT 260.

4) February, 2006

According to the aforementioned policy on budgeting and excluding the FIP payment, Claimant's budget reveals a net monthly income of \$783.00. This was obtained by subtracting the standard deduction of \$125.00 and the maximum excess shelter amount of \$400.00 from 80% of the earned income of \$783.00. The amount of food assistance allotment is established by regulations at 7 CFR 273.10. A household of two people with a net monthly income of \$916.00 is entitled to a monthly FAP grant of \$43.00 per month. PRT 260.

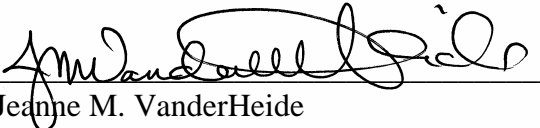
Based upon the foregoing facts and relevant law, it is found that the Department can recoup \$2129.00 from the Respondent for overpayment of FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent committed an IPV with regard to the FIP and FAP programs and received over-issuances in program benefits.

It is ORDERED that respondent be disqualified from the FIP and FAP programs for a period of 12 months.

It is further ORDERED that the Department recoup for over-issuances in FAP benefits in the amount of \$2,129.00 and in FIP benefits in the amount of \$4,297.00 for a total recoupment of \$6,426.00.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 01/19/10

Date Mailed: 01/20/10

2009-30010/JV

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.

JV/dj

cc:

