

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: 2009-3498  
Issue No: 3055  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
April 1, 2009  
Clare 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 April 1, 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 9-1-06 through 3-31-07.
- 2) On 9-7-06, respondent completed a DHS-1171, Application for Assistance, in which she reported that her husband had been employed since May 2006 with [REDACTED]
- 3) This did not disqualify respondent for benefits, but benefits were reduced to \$78 in October, 2006.
- 4) Respondent was notified of the responsibility to report income changes again at that time.
- 5) In October, 2006, respondent reported to DHS that her husband had been laid off from [REDACTED], and benefits were restored to previous levels.
- 6) Respondent's husband returned to work in November 2006, but did not report this to DHS.
- 7) Respondent's husband continued to be paid in amounts that would normally disqualify respondent for benefits.
- 8) On 2-2-07, respondent submitted a semi-annual contact report, and reported that respondent's husband had returned to work in November, 2006.
- 9) DHS immediately reduced FAP benefits to the correct amount in April, 2007.
- 10) Respondent was aware of the responsibility to report all employment and income to the department.
- 11) On 10-14-08, 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.

12) A Notice of Disqualification Hearing was mailed to respondent at the last known address and was not returned by the U.S. Post Office as undeliverable. Respondent's last known address is: [REDACTED]

13) OIG Agent Thomas Lilienthal represented the Department at the hearing; respondent did not appear.

14) This is respondent's second 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 for the purpose of defrauding the Department with regard to the FAP program.

In this case, the Department has established that respondent was aware of the responsibility to report all income and employment to the department. Respondent has no

apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. Furthermore, there is clear and convincing evidence that the respondent intended to mislead the Department with regard to her FAP eligibility.

Respondent filled out an application in September, 2006, that acknowledged that her husband had been employed since May, 2006. Had the case simply ended here, it is doubtful that an IPV would be pursued. However, the respondent immediately reported in October, 2006, that her husband had been laid off. She did not report that her husband returned to work until she had to, in February, 2007. Had the underlying issue been merely a failure to report income, the Administrative Law Judge would admit that there would be doubts as to whether the respondent intentionally meant to mislead the Department, or had a simple lapse of memory.

However, the evidence is clear that the respondent knew of her obligation to report. She reported instantly when her husband was laid off in order to *increase* her benefit amount. However, she waited several months to report to prevent her benefits from *decreasing*.

Additionally, she would have been warned about her actions in September, after reporting that her husband had been working for the past 4 months. The fact that respondent knew to report income in order to increase her benefits means that respondent must also have known that she should report her income when it would mean a decrease in benefits—she cannot have it both ways. Additionally, this is respondent's second alleged IPV; she should have known that she would be under increased scrutiny given that she has been punished for her actions in the past. It is clear that she knew about her obligations to report, and has lost the ability to claim fault with her memory. The only option left is to conclude that the respondent intended to mislead the Department. Therefore, the undersigned believes that all of the above facts amount to clear and convincing evidence of intent to mislead the Department in an attempt to defraud the Department—an intentional program violation.

Therefore, as a result of the failure to report all income, respondent committed an IPV, and received an overissuance in benefits. In Exhibit 9 and 10, the Department convincingly established that the correct overissuance amount that they are entitled to recoup was in the amount of \$2,727.00.

Finally, as a result of the IPV, the Department properly requested that the respondent be disqualified from participation in the FIP and FAP programs for the period of two years.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed an Intentional Program Violation of the FAP program and the department is entitled to recoup the overissuance of \$2,727.00.

Accordingly, the respondent is disqualified from participation in the FAP program for a period of two years.

The department is entitled to recoup the overissuance of benefits respondent ineligibly received. Respondent is ORDERED to reimburse the department for the overissuance.

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

Date Signed: May 14, 2009

Date Mailed: May 14, 2009

**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:

