

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: 2009-4382

Issue No: 3052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 11, 2009

Wayne 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 February 11, 2009. Respondent did not appear.

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 June 23, 2000, respondent's son [REDACTED] began part time employment for [REDACTED]

(2) On October 3, 2003, respondent signed an application for Food Assistance Program (FAP) benefits. The application listed 7 in the group and only requested benefits for 3

of the group members. The application was marked that all group members buy, fix, or eat together. The application listed earned income from respondent's sons, [REDACTED] from [REDACTED] and [REDACTED]. Respondent's signature was a certification that all the information on the application was true.

(3) On October 8, 2003, respondent's son [REDACTED] began employment at [REDACTED]

[REDACTED]

(4) On March 3, 2004, respondent signed an application for Food Assistance Program (FAP) benefits. The application listed 6 in the group and only requested benefits for 4 of the group members. The application was marked that all group members buy, fix, or eat together. The application listed earned income from respondent's son, [REDACTED] from [REDACTED]. Respondent's signature was a certification that all the information on the application was true.

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).

The department's manuals provide the following relevant policy statements and instructions for department caseworkers:

PAM 105 RIGHTS AND RESPONSIBILITIES

DEPARTMENT POLICY

All Programs

Clients have rights and responsibilities as specified in this item. The local office must do **all** of the following:

- Determine eligibility.
- Calculate the level of benefits.
- Protect client rights.

LOCAL OFFICE RESPONSIBILITIES

All Programs

Ensure client rights described in this item are honored and that client responsibilities are explained in understandable terms. Clients are to be treated with dignity and respect by all DHS employees.

Informing the Client All Programs

Inform people who inquire about:

- The DHS programs available, including domestic violence comprehensive services.
- Their right to apply. Provide specific eligibility information on any program in which they are interested. See RFF about publications that can be used for this purpose.

Assisting the Client All Programs

The local office must assist clients who ask for help in completing forms (including the DCH-0373-D) or gathering verifications. Particular sensitivity must be shown to clients who are illiterate, disabled or **not** fluent in English.

The poster, DHS Publication 478, Help Is Available, must be displayed in the local office lobby. A section of the application form has the same title and information. These documents tell clients that DHS must help persons fill out the application when requested.

Interpreters

Record the need for an interpreter and the applicant's primary language code on the ASSIST Residential Address (ADDRES) screen.

A client who needs a bilingual interpreter must be informed that he may choose one of the following:

- Arrangements for an interpreter by DHS, including payment of any costs.
- Use of his or her own adult interpreter.

PEM 212 FOOD ASSISTANCE PROGRAM GROUP COMPOSITION

DEPARTMENT POLICY

You must determine who is included in the Food Assistance Program (FAP) group prior to evaluating the nonfinancial and financial eligibility of everyone in the group.

To establish FAP group composition determine:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately, and
4. Whether the person(s) resides in an eligible living situation. (See "[LIVING SITUATIONS](#)" in this item.

RELATIONSHIPS

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First determine if they **must** be included in the group. If they are **not** mandatory group members, then determine if they purchase and prepare food together or separately.

LIVING WITH

Living with means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area (e.g., entrance or hallway) or non-living area (e.g., laundry) are **not** considered living together.

FOOD PURCHASE AND PREPARATION

The phrase **purchase and prepare together** is meant to describe persons who customarily share food in common.

Persons **customarily** share food in common if:

- They each contribute to the purchase of food; **or**
- They share the preparation of food, regardless of who paid for it; **or**
- They eat from the same food supply, regardless of who paid for it. In general, persons who live together and purchase and prepare food together are members of the FAP group.

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).

In this case, department policy on group composition required that all members listed on the application be included in the benefit group. That is the reason all household income was required in the financial eligibility budget.

The department has requested a disqualification hearing to establish an over-issuance of benefits as a result of an intentional program violation (IPV) and the department has asked that respondent be disqualified from receiving benefits. There are several important facts contained in the record that counter the department’s allegation of an IPV.

On the October 3, 2003, application, respondent listed 7 members in the group. Respondent only requested benefits for 3 of the group members, himself, his wife, and a daughter named [REDACTED]. Respondent specifically marked that he was not requesting benefits for his sons [REDACTED] [REDACTED] are the members of the group that had earned income. In section 2, respondent listed that [REDACTED] was under 18 and the parent of a child listed. None of the listed members has a birth date or relationship listing that indicates a child. In section 5, respondent listed that [REDACTED] was acting as parent to a person under 21. In section 20, respondent marked that no persons were employed. Yet respondent listed the earned income of [REDACTED] in the next section. [REDACTED] had not started working yet.

On the March 3, 2004, application, respondent listed 6 members in the group. [REDACTED] was not listed on the application. Respondent requested benefits for 4 of the group members, himself, his wife, [REDACTED]. Respondent specifically marked that he was not requesting benefits for his son [REDACTED]. [REDACTED] are the members of the group that had earned income. In section 2, respondent listed that [REDACTED] was the child of person under age 18 and a parent. In section 5, respondent listed that [REDACTED] was acting as parent to a person under 21. In section 20, respondent marked that no persons were employed. Yet respondent listed the earned income of [REDACTED] in the next section.

DECISION AND ORDER

The Administrative Law Judge, based upon the evidence, decides the record does not constitute clear and convincing evidence that Respondent understood the reporting requirements or that Respondent withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. An intentional program violation IPV on the part of Respondent, IS NOT established.

An over-issuance of Food Assistance Program (FAP) benefits occurred. The evidence in the record is insufficient to determine if the Department fulfilled its responsibility under Program Administrative Manual (PAM) 105 with regard to Respondent's understanding of English. For that reason it cannot be determined if the over-issuance was agency error or client error.

The record does not contain sufficient evidence to determine the over-issuance amount. The financial eligibility budgets for November 2003 through March 2004 are based on a group size of 6. The group size was 7. The financial eligibility budgets for April 2004 through September 2004 use the income for [REDACTED]. [REDACTED] is not listed as a group member on the March 3, 2003 application.

The Department may correctly determine and calculate the over-issuance and pursue collection under the appropriate Department policy.

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

Date Signed: March 4, 2009

Date Mailed: March 6, 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.

GFH [REDACTED]

cc: [REDACTED]