

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: 2009-4442  
Issue No: [REDACTED]  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
February 11, 2009  
Genesee 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: On March 18, 2005, respondent's daughter, [REDACTED], began receiving pay checks from her employment at [REDACTED].

(2) On May 5, 2005, respondent submitted an application for Food Assistance Program (FAP) benefits. The application did not list any income for respondent's daughter,

██████████. ██████████ was 17 years old. Respondent signed the application which serves as certification that all information is complete and correct.

(3) On September 6, 2005, ██████████ started working at ██████████.

(4) On October 11, 2005, ██████████ stopped working at ██████████.

(5) On October 24, 2005, respondent submitted an application for Food Assistance Program (FAP) benefits. The application did not list any income for respondent's daughter,

██████████. ██████████ was 18 years old. Respondent signed the application which serves as certification that all information is complete and correct.

(6) On February 6, 2006, respondent submitted a Semi-Annual Contact Report (DHS-1046). Respondent did not indicate that Amanda was working.

(7) On February 18, 2006, ██████████ stopped working at ██████████.

(8) On February 20, 2006, ██████████ started working at ██████████.

(9) On August 25, 2006, the department received a Verification of Employment (DHS Form 38) from ██████████. The form showed ██████████ dates of employment and the income she earned from the employment.

(10) On October 12, 2006, the department received a Verification of Employment (DHS Form 38) from ██████████. The form showed ██████████ dates of employment and the income she earned from the employment.

(11) On March 29, 2007, the department received a response to a subpoena sent to ██████████. The information received showed ██████████ dates of employment and the income she earned from the employment.

#### 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:

## **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 mandates that all the members living in respondent’s home were mandatory benefit group members. The income of all group members must be counted in the financial eligibility budget. On May 5, 2005, when respondent signed and submitted the

application her daughter was working. Respondent did not report that income on the application. This intentional omission is sufficient to establish an intentional program violation (IPV).

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides the following:

Sheri Ann Durga committed an intentional program violation (IPV) by intentionally failing to report her daughter's earned income to the Department of Human Services for use in determining financial eligibility for Food Assistance Program (FAP) benefits. The omission caused respondent to be over-issued \$ [REDACTED] of Food Assistance Program (FAP) benefits between September 2005 and September 2006. The Department of Human Services is entitled to recoup this over-issuance.

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

Date Signed: March 12, 2009

Date Mailed: March 12, 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.

[REDACTED]

cc:

[REDACTED]