

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

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IN THE MATTER OF:

DHS Reg. No: 2009-4554
SOAHR Docket No. 2009-4581 REHD
Case No: [REDACTED]

[REDACTED]

Appellant

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 24.287(1) and 1993 AACRS R 400.919 upon the request of the Department. The undersigned Administrative Law Judge reviewed all documentary evidence, the Order of Dismissal, and the Request for Reconsideration, prior to rendering this Reconsideration Decision.

ISSUE

Did the Administrative Law Judge err in his dismissal of the Department's Intentional Program Violation request for hearing related to Claimant's Food Assistance Program (FAP) benefits and Family Independence Program (FIP)?

FINDINGS OF FACT

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

1. On October 28, 2008, Administrative Law Judge Gary Heisler issued an Order of Dismissal in which the Administrative Law Judge dismissed the Department of Human Services' (DHS) request for hearing related to Claimant's Intentional Program Violation and recoupment of FAP and FIP benefits.
2. On November 13, 2008, the State Office of Administrative Hearings and Rules for the Department of Human Services received the Department of Human Services' Request for Reconsideration.
3. On January 5, 2009, the State Office of Administrative Hearings and Rules, Administrative Hearings for the Department of Human Services (DHS) granted the Department's request for reconsideration and issued an Order of Reconsideration.

4. On January 8, 2008, DHS sent Claimant a third notification it had evidence she had failed to timely provide notification of change in residency and had collected dual assistance from the state of [REDACTED] and the state of [REDACTED]. (Exhibit 1, pp 8-10). The notification indicated Claimant had intentionally violated Food Assistance Program and Family Independence Program regulation, and requested she sign and return enclosed Intentional Program Violation Repayment Agreement and Disqualification Consent Agreement forms. (Exhibit 1, pp 8-10).
5. On June 4, 2008, DHS requested a hearing with the State Office of Administrative Hearings and Rules, Administrative Hearings pursuant to its Intentional Program Violation action. (Exhibit 1, p 4).

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 Family Independence Program (FIP) program was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 8 USC 601, *et seq.* and is implemented by Title 45 of the CFR.

The Department of Human Services administers the FAP and FIP programs 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).

On January 8, 2008, DHS sent Claimant a third notification it had evidence she had failed to timely provide notification of change in residency and had collected dual assistance from the state of [REDACTED] and the state of [REDACTED]. (Exhibit 1, pp 8-10). The notification indicated Claimant had intentionally violated Food Assistance Program and Family Independence Program regulation, and requested she sign and return enclosed Intentional Program Violation Repayment Agreement and Disqualification Consent Agreement forms. (Exhibit 1, pp 8-10). On June 4, 2008, DHS requested a hearing pursuant to its Intentional Program Violation action. (Exhibit 1, p 4).

A fair hearing commenced on October 8, 2008. On October 28, 2008, Administrative Law Judge Gary Heisler issued an Order of Dismissal in which he dismissed the DHS' request for hearing related to the IPV. ALJ Heisler's Order of Dismissal listed provisions from the DHS manual that assists its employees in administering the FAP program (*PAM 720.*) ALJ Heisler's Order of Dismissal made reference to DHS exceeding 18 months before requesting a hearing as the reason for dismissing the hearing. (Hearing Decision, p 2).

The Department requested a reconsideration of the dismissal, asserting that the 18 month time limitation is a standard of promptness it encourages its employees to follow and failure to meet the standard of promptness cannot override its requirement under law and regulation to pursue IPV and recoupment related to IPV.

As noted above, FAP is a federal program administered by the State of Michigan Department of Human Services via an agreement with the federal government. Pursuant to that agreement, the Department is bound by the requirements listed in the federal regulations regarding the implementation of FAP. The federal regulations unequivocally mandate that the Department recoup an overissuance of FAP benefits.

7 CFR Sec. 273.18 Claims against households.

(a) General. (1) A recipient claim is an amount owed because of:

- (i) **Benefits that are overpaid** or
- (ii) Benefits that are trafficked. Trafficking is defined in 7 CFR 271.2.

(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.

(3) As a State agency, you must develop a plan for establishing and collecting claims that provides orderly claims processing and results in claims collections similar to recent national rates of collection.

(4) The following are responsible for paying a claim:

- (i) Each person who was an adult member of the household when the overpayment or trafficking occurred;

(b) Types of claims. There are three types of claims:

1) Intentional Program violation (IPV) claim... **any claim for an overpayment or trafficking resulting from an individual committing an IPV.** (Emphasis added).

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The Department's policy regarding IPV and recoupment of overissued FAP benefits is consistent with the federal regulations and requires the Department to pursue IPV and start a collection action. See *PAM 720*. For IPV actions, the Department refers the case to this State Office of Administrative Hearings and Rules (SOAHR) as a request for an administrative hearing. See *PAM 720*.

The ALJ made a clear error of law and policy when he dismissed the Department's request for IPV and recoupment action hearing based on a departmental administrative standard of promptness. The ALJ used the reason of not meeting its standard of promptness to create an exception to the federal requirement to pursue IPV, where no such exception existed.

The Department is bound to follow federal regulation and state policy when implementing the FAP program. Federal regulation and Department policy require DHS to pursue IPV and recoup overissued FAP benefits.

The Administrative Law Judge is also bound by federal regulation and state policy and lacks any equitable jurisdiction. The ALJ erred when he used a departmental administrative standard of promptness to override federal regulation and state policy, and dismiss the Department's request for hearing.

DECISION AND ORDER

The undersigned Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Administrative Law Judge erred when he dismissed the Department's Intentional Program Violation request for hearing related to Claimant's Food Assistance Program benefits.

IT IS THEREFORE ORDERED that:

1. The Administrative Law Judge's decision dated October 28, 2008, is REVERSED.
2. SOAHR will schedule a hearing based on the Department's June 4, 2008, request for hearing and issue a notice of hearing to the parties.

/s/

Martin D. Snider
Administrative Law Judge for Michigan
Department of Human Services

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cc:

[REDACTED]

Date Mailed: 7/22/09
Date Signed: 7/22/09