

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: 2009-6180
Issue No: 1052; 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 1, 2009
Genesee 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 10-1-05 through 8-31-2006.
- 2) On 8-5-05, respondent completed a DHS-1171, Application for Assistance, in which she claimed that she was not employed, and did not receive any income.
- 3) On 8-23-05, respondent became employed with [REDACTED], where she was paid \$9.00 an hour, and was expected to work 40 hours per week.
- 4) On 9-2-05, respondent received her first paycheck, with a gross income of \$337.50.
- 5) Respondent continued to receive similar sized paychecks every week, until her employment with Entech ended on 12-16-05.
- 6) On 11-2-05, respondent completed a second DHS-1171 as part of a benefit review.
- 7) On this application, she again indicated that she was not working and had no income.
- 8) On 9-2-05, respondent also began employment with [REDACTED] where she was paid \$10.75 an hour and expected to work 40 hours per week.
- 9) Respondent received her first paycheck from [REDACTED] on 12-29-05, and continued receiving paychecks once a week until through the year 2007.
- 10) On 7-11-06, DHS ran a wage match on respondent, and discovered that respondent had unreported income for the time in question.
- 11) At no time did respondent notify DHS of her employment.
- 12) Respondent was aware of the responsibility to report all employment and income to the department.

13) On 11-19-08, 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.

14) 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]

15) OIG Agent Kanisha Underwood represented the Department at the hearing; respondent did not appear.

16) This is respondent's first 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). I

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 assistance application in August, 2005. Shortly after this, as seen in Exhibits 3,6 and 7, respondent started employment with Entech Leasing, and eventually continued employment with [REDACTED]. 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, in November 2005, when respondent had been working for 2 months and receiving an income of over \$1,500 a month, respondent filed a second assistance application which explicitly stated that she was not employed and was receiving no income. This moves respondent's actions from potential memory lapse to outright falsehood. The undersigned believes that this falsehood was 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 Exhibits 2, 8, 9, 10, the Department convincingly established that the correct overissuance amount that they are entitled to recoup was in the amount of \$1,312.

Finally, as a result of the IPV, the Department properly requested that the respondent be disqualified from participation in the FAP program for the period of one year.

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 \$1,312.00.

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

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

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

Date Signed: April 20, 2009

Date Mailed: April 22, 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:

