

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: 2009-9344
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 and FIP benefits during the period of 7-1-04 through 12-31-2004.
- 2) Sometime in early 2004, respondent dislocated her ankle and stopped going to work because of this injury.
- 3) Respondent had no income during this time.
- 4) On 7-3-04, respondent returned to work.
- 5) On 10-6-04, respondent contacted DHS and told them that she hoped to return to work the next week.
- 6) At no time did respondent tell the Department that she had actually been working since July.
- 7) An employment verification sent to respondent's employer verified that respondent had been working and receiving paychecks since July, 2004.
- 8) On this application, she again indicated that she was not working and had no income.
- 9) Respondent was aware of the responsibility to report all employment and income to the department.
- 10) 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.
- 11) A Notice of Disqualification Hearing was mailed to respondent at the last known address and was returned by the U.S. Post Office as undeliverable. Respondent's last known address is: [REDACTED]

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

13) 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).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. 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 told the Department in October, 2004, that she had been off of work since July. However, an employment verification sent to respondent's employer in December, 2004, verified that respondent had been working since July. 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, by specifically telling the Department that she had not been working, respondent's actions move 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 in a timely manner, respondent committed an IPV, and received an overissuance in benefits.

However, after reviewing Department Exhibit 9, the program issuance budgets, the undersigned disagrees with the amount that the Department is lawfully entitled to recoup.

In each budget, the Department has left out respondent's rental amount, which had been verified by a DHS-3688, Shelter Verification. The Department did allow respondent to claim

heating and other utility deductions. The Department claimed that they did not allow the rental income because respondent did not write a letter explaining how she was meeting her rental obligations with her income. While this may have been a legitimate question, the fact remains that the rental amount was verified, as required by the Program Eligibility Manuals, and we now know that respondent was meeting her rental obligations through unreported income. Furthermore, there is no regulation that would require respondent to write a statement explaining her income. Finally, the Department's position is inconsistent, given that they allowed claimant to expense utilities, with no statement as to how she was meeting those obligations.

The Department may not have its cake and eat it too; either respondent had no income, and therefore, no IPV (which would leave questions as to whether respondent's rent could be counted, as well as open the question as to whether the Department could have determined eligibility in the first place), or respondent committed an IPV, and was using her unreported income to pay the verified rental amount, which should therefore be factored in to respondent's overissuance amount. The Department did not factor in this rental amount, and that is error.

After factoring in the rental amounts, the Administrative Law Judge has determined the following:

1. For the month of September, 2004, the Department calculated that the overissuance amount was \$238 in FAP allotments; the undersigned finds that the correct overissuance amount is \$127, after factoring in the rental amount and consulting the proper issuance tables.
2. For the month of October, 2004, the Department calculated that the overissuance amount was \$264 in FAP allotments; the undersigned finds that this calculation was correct.

3. For the month of November, 2004, the Department calculated that the overissuance amount was \$264 in FAP allotments; the undersigned finds that the correct overissuance amount is \$158, after factoring in the rental amount and consulting the proper issuance tables.
4. For the month of December, 2004, the Department calculated that the overissuance amount was \$264 in FAP allotments; the undersigned finds that this calculation was correct.

Therefore, the undersigned finds that the correct amount that the Department may recoup in improperly issued FAP benefits is \$813.

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.

With regard to the FIP program, the ADC/FIP portion of the hearing request must be dismissed without prejudice because the notice of hearing was returned by the Post Office as undeliverable. MAC R 400.3130(5); PAM 725.

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 \$813.00.

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.

The ADC/FIP portion of the hearing request is DISMISSED without prejudice because the notice of hearing was returned as undeliverable.

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

Date Signed: May 26, 2009

Date Mailed: May 27, 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:

