

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: 2009-9934
Issue No: 3055; 5009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 20, 2009
Clare County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 May 20, 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 400.3178(5).

ISSUES

1. Whether respondent committed an Intentional Program Violation (IPV) on the Food Assistance Program (FAP) and whether respondent received an overissuance of benefits that the department is entitled to recoup?
2. Whether respondent committed an IPV on the State Emergency Relief (SER) 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 December 10, 2008, the department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of FAP and SER 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 FAP benefits.

2. Respondent signed Application for State Emergency Relief (FIA-1514) on June 9, 2004, and Assistance Application (1171) on January 14, 2005, acknowledging that she understood her failure to give timely, truthful, complete and accurate information regarding her circumstances could result in a civil or criminal action or an administrative claim against her (Department's Exhibits 1 and 2, pages 14-24).

3. Respondent listed her home address as [REDACTED]. On October 19, 2005, department received Postmaster Verification showing that the father of respondent's children [REDACTED] was living at [REDACTED], and mail is deliverable to him there. (Department's Exhibit 3, page 25).

4. Respondent had previously reported to the department that [REDACTED] was out of her home in July, 2005. Respondent failed to report [REDACTED] employment and income with the [REDACTED] to the department.

5. Department's caseworker initiated a Fraud Investigation Request on January 25, 2006, after respondent applied for SER with an application stating that [REDACTED] paid mortgage payments, address postmaster verification showed that he still receives mail at

respondent's home, and caseworker saw [REDACTED] on January 24, 2006, grocery shopping together at [REDACTED] in Mt. Pleasant. (Department's Exhibit 5, page 247).

6. On August 24, 2007, department received employment verification from the [REDACTED] [REDACTED] showing that [REDACTED] was employed there and listing all of the income he had received. (Department's Exhibit 6, pages 28-31).

7. Department computed FAP overissuance budgets and determined that the respondent received \$2,286.00 in FAP benefits from August 1, 2005 thru March 31, 2006 ineligibly due to her failure to report that [REDACTED], father of her children and therefore a mandatory FAP group member, was living with her and receiving employment income.

8. Respondent also received SER assistance in the amount of \$1,137.34 from October 1, 2005 thru March 31, 2006 ineligibly, due to her failure to report that [REDACTED] was living with her and employed.

9. OIG Agent testified that 2005 Michigan Individual Income Tax Return MI-1040 for [REDACTED] shows them at the same address, filing their taxes under the same household, and claiming to be living with each other in 2005. Furthermore, 2006 Michigan Individual Income Tax Return MI-1040 for [REDACTED] shows them again at the same address, filing their taxes under the same household, and claiming to be living with each other in 2006.

10. Respondent failed to contact OIG for interviews dated July 7, 2007 and March 26, 2007.

11. Notice of hearing was mailed to the respondent at her last known address, [REDACTED] [REDACTED]. Respondent did not show up for the hearing.

12. Respondent was clearly instructed and fully aware of her responsibility to report all household income to the department.

13. Respondent was physically and mentally capable of performing her reporting responsibilities.

14. Respondent has not committed any previous intentional FAP or SER program violations.

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 State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (DHS or department) policies are found in the State Emergency Relief Manual (SER).

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:

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). PAM, Item 700, p. 1.

Definitions

The **Automated Recoupment System (ARS)** is the part of CIMS that tracks all FIP, SDA and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for active programs.

A **claim** is the resulting debt created by an overissuance of benefits.

The **Discovery Date** is determined by the Recoupment Specialist (RS) for a client or department error. This is the date the OI is known to exist and there is evidence available to determine the OI type. For an Intentional Program Violation (IPV), the Office of Inspector General (OIG) determines the discovery date. This is the date the referral was sent to the prosecutor or the date the OIG requested an administrative disqualification hearing.

The **Establishment Date** for an OI is the date the DHS-4358A-D, Repay Agreement, is sent to the client and for an IPV, the date the DHS-4357 is sent notifying the client when the disqualification and recoupment will start. In CIMS the “establishment date” has been renamed “notice sent date.”

An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold).

Overissuance Type identifies the cause of an overissuance.

Recoupment is a DHS action to identify and recover a benefit OI. PAM 700, p. 1.

PREVENTION OF OVERISSUANCES

All Programs

DHS must inform clients of their reporting responsibilities and act on the information reported within the Standard of Promptness (SOP).

During eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities, including:

- . Acknowledgments on the application form, **and**
- . Explanation at application/redetermination interviews, **and**
- . Client notices and program pamphlets.

DHS must prevent OIs by following PAM 105 requirements and by informing the client or authorized representative of the following:

- . Applicants and recipients are required by law to give complete and accurate information about their circumstances.
- . Applicants and recipients are required by law to promptly notify DHS of all changes in circumstances within 10 days. FAP Simplified Reporting (SR) groups are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size.
- . Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.
- . A timely hearing request can delete a proposed benefit reduction.

INTENTIONAL PROGRAM VIOLATION

DEFINITIONS

All Programs

Suspected IPV

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).

The federal Food Stamp regulations read in part:

- (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).

IPV

FIP, SDA AND FAP

IPV exists when the client/AR is determined to have committed an Intentional Program Violation by:

- . A court decision.
- . An administrative hearing decision.
- . The client signing a DHS-826, Request for Waiver of Disqualification or DHS-83, Disqualification Consent Agreement, or other recoupment and disqualification agreement forms. PAM, Item 720, p. 1.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 720, p. 2.

OVERISSUANCE AMOUNT

FIP, SDA, CDC and FAP Only

The amount of the OI is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. PAM 720, p. 6.

IPV Hearings

FIP, SDA, CDC, MA and FAP Only

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings for cases when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**

The total OI amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1,000 or more, **or**

- . The total OI amount is less than \$1,000, **and**

- .. The group has a previous IPV, **or**
- .. The alleged IPV involves FAP trafficking, **or**
- .. The alleged fraud involves concurrent receipt of assistance (see PEM 222), **or**
- .. The alleged fraud is committed by a state/government employee.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained. PEM, Item 720, p. 10.

DISQUALIFICATION

FIP, SDA and FAP Only

Disqualify an active **or** inactive recipient who:

- . is found by a court or hearing decision to have committed IPV, **or**
- . has signed a DHS-826 or DHS-830, **or**
- . is convicted of concurrent receipt of assistance by a court, **or**
- . for FAP, is found by SOAHR or a court to have trafficked FAP benefits.

A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. PAM 720, pp. 12-13.

Standard Disqualification Periods

FIP, SDA and FAP Only

The standard disqualification period is used in all instances except when a **court** orders a different period (see **Non-Standard Disqualification Periods**, in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- . One year for the first IPV
- . Two years for the second IPV
- . Lifetime for the third IPV

FIP and FAP Only

- . Ten years for concurrent receipt of benefits (see PEM 203).
PAM 720, p. 13.

Departmental policy also directs the department to ask for cash repayment of any SER payments that a person receives ineligibly. ERM 404.

In this case, the department has established that respondent was aware of the responsibility to report all of her circumstances including persons living in her household and 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. This Administrative Law Judge therefore concludes that the department has shown, by clear and convincing evidence, that respondent committed a first intentional violation of the FAP program, resulting in a \$2,286.00 overissuance from August 1, 2005 thru March 31, 2006. Consequently, the department's request for FAP program disqualification and full restitution must be granted. Furthermore, department has also shown, by clear and convincing evidence, that the respondent committed a first intentional violation of the SER program, resulting in a \$1,137.34 overissuance from October 1, 2005 thru March 31, 2006.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed a first intentional FAP and SER program violation.

Therefore it is ORDERED that:

1. Respondent shall be personally disqualified from participation in the FAP program for one year, but the rest of the household may participate. This disqualification period shall begin to run immediately as of the date of this Order.
2. Respondent is responsible for full restitution of the \$2,286.00 FAP and \$1,137.34 SER overissuance caused by her Intentional Program Violation (IPV).

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 14, 2009

Date Mailed: July 15, 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.

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cc: 