

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.: 2010-26926
Issue No.: 3052
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 30, 2010
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on June 30, 2010. The 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). [REDACTED], OIG representative appeared on behalf of the Department.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether the respondent received an overissuance of benefits that the Department is entitled to recoup?

FINDINGS OF FACT

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

1. 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 IPV. The OIG also requested that respondent be disqualified from receiving program benefits.

2. Respondent was a recipient of FAP benefits since at least May, 2006.
3. Respondent was aware of the responsibility to report all income in the household to the department and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
4. Respondent signed an application for benefits on 12/4/04 and 5/26/06. Respondent went on maternity leave from 5/1/06 – 8/20/06.
5. Claimant's position was no longer available as of 12/22/06.
6. The Department produced evidence that Claimant received income between May, 2006 and May 2007 by a quarterly income report.
7. An IPV investigation was initiated.
8. As a result, the Department determined that respondent received over issuances in the amount of \$3,584.00 under the FAP program.
9. The Department has been unable to contact respondent in any way throughout the IPV investigation. The notice of hearing was returned as undeliverable.
10. The Department has not established that respondent committed an IPV.

CONCLUSIONS OF LAW

The Food Assistance Program, 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"), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental

policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Reference Tables (“RFT”).

A. IPV

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over issuance (OI). PAM 700, p. 1. DHS must inform clients of their reporting responsibilities and prevent OIs by following PAM 105 requirements informing the client of the requirement to promptly notify DHS of all changes in circumstances within 10 days. PAM 700, PAM 105. Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.

An Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM 720, p. 1. 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).

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

In the present case, the Respondent signed an application on 5/23/06. Respondent also provided a statement from her employer indicating that she was on maternity leave as of 5/1/06. The Department provided as evidence an employee wage history showing Respondent’s earned income by quarter. (Exhibit 1, pp. 27-28). Yet there is nothing in the record to indicate when

Respondent earned said income during the quarter. Accordingly, the Administrative Law Judge does not find that there was an IPV as it cannot be determined when the income was earned and income during the 2nd quarter could have been earned prior to the maternity leave date. Respondent returned to work at some point after her maternity leave but did not resign a DHS 1141 indicating the amount of her income until May of 2007. When her case was reviewed, Respondent reported the income. The evidence does not show by clear and convincing evidence that Respondent's receipt of benefits was intentionally withheld to increase or maintain benefits. The Administrative Law Judge finds that Respondent did not commit an IPV.

B. Recoupment

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. If improper reporting or budgeting of income caused the OI, use actual income for the OI month for that income source, converting to a monthly amount if appropriate. For FAP only, the Department should not convert income which the client failed to report or was reported on a wage match. PAM/BAM 715, p. 6.

When calculating FAP benefits, the federal regulations define household income to include all earned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. PEM 550. Under 7 CFR 273.9, as amended, \$125.00 is deducted from the gross income of FAP recipients in determining FAP grants. Unearned income includes FIP benefits, SSI payments for family members (PEM 500, p. 33) and child support (PEM 500, p. 10). Under 7 CFR 273.9 deductions for excess shelter are also made. PEM 554. Id. There is a standard heat and utility deduction as well as a standard deduction for telephone bills. Id. The standard

deductions are a set amount that is applied regardless of the actual expenses incurred by the Claimant.

In the present case, the Department is attempting to recoup the amount overpaid to Respondent in FAP benefits. As the Department only determined income based on a quarterly analysis, it is uncertain whether there was an IPV during the 2nd quarter of 2006. The regulations are clear that the amount of the over-issuance is what the client received less the amount the client was eligible to receive. Without month by month income reports, it is unclear what the client was eligible to receive during May or June of 2006. The undersigned, therefore, finds that there was no over-issuance during the months of May or June, 2006. For the remaining months, the Department converted Respondent's quarterly income to a monthly amount. It is apparent that Respondent earned money which was not counted in the FAP budgets and that there was an over-issuance during some, if not all months. However, the regulations are specific that actual income must be used and for FAP the amounts are not to be converted to a monthly amount. There may have been months that Claimant did not have any income and would have been entitled to some FAP benefits rather than none.

Based upon the foregoing facts and relevant law, it is found that the Department did not properly use Respondent's monthly income in calculating an over-issuance; therefore the calculation of over-issuance is incorrect. Accordingly, the Department's request for recoupment is denied.

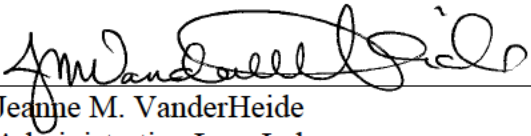
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent did not commit an IPV with regard to the FAP program. Furthermore,

the Department did not provide sufficient evidence to support the amount of recoupment requested.

It is ORDERED that the request for an IPV from May, 2006 – May, 2007 and disqualification is DENIED.

It is further ORDERED the department has not established conclusively the amount that respondent received in over-issuance of FAP benefits. Accordingly, the department's request for recoupment is DENIED.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/19/2010

Date Mailed: 07/19/2010

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.

JV/cjp

cc:

