

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.: 2010-29766
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 Michigan issued FAP benefits during the period of September, 2006 – December, 2007.
3. Respondent was aware of the responsibility to report her current address and receipt of benefits to the department and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
4. Upon application for Michigan FAP, Claimant reported to her caseworker that she had applied for benefits in Washington, D.C., but had not received them. (Exhibit 1, p. 14).
5. Respondent was issued food assistance benefits from Washington, D.C., since August, 2006. (Exhibit 1, pp. 15-17).
6. The Department produced FAP expenditures for Michigan but not Washington, D.C.
7. As a result of simultaneously receiving benefits from two states, the Department argues that respondent committed an IPV and received an overissuance of benefits and that respondent received over-issuances in the amount of \$2,158.00 under the FAP program.
8. 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”).

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 and CDC, 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. 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.

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and

disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. PEM 203.

In the present case, the Department has established that respondent was aware of the responsibility to report her correct address and benefits received and had no apparent limitations to fulfilling this requirement. However, the record also reveals that upon initial application for Michigan FAP benefits, Respondent reported to her caseworker that she had applied for food benefits in Washington, DC but did not receive them. Respondent also reported that she did not tell her Washington, DC case worker that she was leaving the state. (Exhibit 1, p. 14) As a result, food benefits continued to be issued in Respondent's name in Washington, D.C. This Administrative Law Judge is concerned that there are no records indicating that Claimant spent the food benefits issued in Washington, D.C. There are spending records for Michigan benefits which show that Respondent occasionally used her FAP benefits in Maryland. (Exhibit 1, pp. 19-28) However, Respondent could have easily been visiting relatives as the majority of her FAP money was spent in Michigan. Respondent was honest about the Washington, D.C. benefit application. Once she reported the Washington, D.C. application, it was the Department's responsibility to determine that Respondent was not receiving benefits in another state before issuing FAP. Accordingly, the undersigned finds that that the over-issuance was not intentional.

Based on the above findings of fact and conclusions of law, the Administrative Law Judge finds that Respondent did not commit an intentional program violation but that there was an over-issuance of benefits.

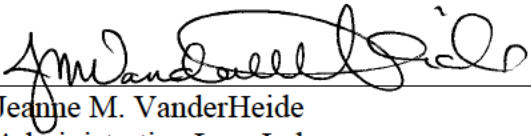
DECISION AND ORDER

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 but that

Claimant was issued benefits in two states and Claimant, therefore received an over-issuance in program benefits.

It is ORDERED that the Department's request for an IPV and disqualification of Claimant is DENIED.

It is further ORDERED that the Department be allowed to recoup for over-issuances in FAP benefits in the amount of \$2,518.00.



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:

