

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Respondent,

Reg. No.: 2010 32599

Issue No.: 3052

Case No.: ██████████

Load No.: ██████████

Hearing Date:

June 30, 2010

Genesee County DHS (02)

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 Claimant's request for rehearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on June 30, 2010. The Respondent appeared and testified. ██████████, OIG representative appeared on behalf of the Department.

ISSUE

1. Whether the respondent had good cause for not appearing at the 8/12/09 IPV hearing?
2. Whether respondent committed an Intentional Program Violation (IPV) and whether the respondent received an over-issuance 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 over-issuance 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. A hearing was held on August 12, 2009 for which Claimant did not appear.
3. On 5/12/10, Judge [REDACTED] ordered a rehearing to determine whether Respondent had good cause for not appearing at the administrative hearing held on 8/12/09 and, if good cause is established, to rehear the IPV.
4. Claimant testified at the re-hearing that she never received notice of the 8/12/09 IPV hearing.
5. Claimant further testified that she had moved from [REDACTED], [REDACTED] on 5/26/09 and lived at two different locations during the summer of 2009 when the hearing notice was mailed.
6. Respondent was a recipient of FIP benefits during the period of 12/1/05 through at least February, 2008.
7. Respondent was aware of the responsibility to report all employment and income to the department and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. Respondent testified that her daughter was attending school which at some point converted to a wage earning job. Respondent was not immediately aware when her daughter's schooling converted to employment as the daughter was not living with Claimant at the time.

9. Respondent testified that she tried to contact the Department repeatedly to notify the Department that her daughter was no longer living with her. Eventually, Respondent mailed notice to the Department of the change in household members.
10. Claimant's daughter was taken off her FAP group in April, 2007.
11. Afterwards, the daughter's wages were discovered through a wage match, an IPV investigation was initiated.
12. As a result, the Department asserts that Respondent received over-issuances in the amount of \$1,126.00 under the FAP program.
13. The Department has not established that respondent committed an IPV.
14. The Department has not established that Respondent was over-issued FAP benefits in excess of \$500.00.

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 Bridges/Program Administrative Manual ("BAM/PAM"), the Bridges/Program Eligibility Manual ("BEM/PEM"), and the Reference Tables ("RFT").

A. Good Cause

The Office of the Inspector General requests an IPV hearing 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. BAM/PAM 725. In the present case, the Claimant testified that she did not receive the original hearing notice as she had moved and changed addresses several times. The undersigned finds that there was good cause for Claimant not being at the hearing as she did not receive timely notice that the 8/12/09 hearing was going to occur. Given the good cause and new evidence which was not heard at the original IPV hearing, the Administrative Law Judge reheard the IPV.

B. 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/BAM 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/BAM 720, p. 6. In general, agency error OIs are not pursued if OI amount is under \$500.00 per program. BAM 705, pp. 1-3.

Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. A supplemental issuance may be necessary in some cases. If verification is returned late, the increase must affect the month after verification is returned. PAM/BAM 220, p. 5.

In the present case, the Department has established that respondent was aware of the responsibility to report all income in the household and had no apparent limitations to fulfilling this requirement. However, the Claimant signed papers indicating the amount of household income on 7/10/06 which was before her daughter started working. Furthermore, the respondent testified that she attempted to report that her daughter was working shortly after she discovered it. Claimant testified that she tried repeatedly to reach the Department and eventually mailed in notice of that her daughter was no longer living in the household. The Administrative Law Judge does not find evidence that the over issuance was intentional.

Furthermore, Claimant testified that she tried to contact her caseworker for 6-8 weeks by telephone before eventually mailing in the notice that her daughter was no longer living in the household. Based on the evidence presented, the Administrative Law Judge finds that Claimant initially reported the change (that her daughter was no longer living in the house) within two months after her daughter began working. Accordingly, Claimant's daughter should have been taken off the FAP group and the daughter's wages not counted as of December 15, 2006.

Claimant would, therefore, have only been overpaid \$284.00 in FAP benefits for the month of December, 2006. As this is less than \$500.00 and was not intentional, the IPV is DENIED.

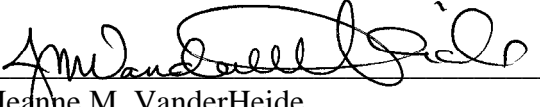
Accordingly, based on the above referenced findings of fact and rules of law, the Administrative Law Judge finds that the respondent did not commit an IPV and was over-issued FAP benefits less than \$500.00. The Departments request is DENIED.

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 regards to the FAP program.

Furthermore, The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent owes the Department less than \$500.00 in over issued FAP benefits.

It is ORDERED that the Department cease recoupment for over-issuances in FAP benefits in the amount of \$1,126.00 for the time period 10/06 – 3/07 and that the IPV, recoupment and disqualification requested by the Department is DENIED.



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

Date Signed: 07/12/2010

Date Mailed: 07/12/2010

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

2010 32599/JV

cc:

