

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201011006

Issue No: 3055; 1052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 21, 2010

Marquette 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 21, 2010. 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 over-issuance 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 benefits during the periods of December 1, 2005 through January 31, 2006.

- 2) Respondent allegedly did not report that she received child support income during this time period
- 3) No DHS-1171 that was dated before this time period was submitted as evidence of this fact.
- 4) On October 5, 2009, 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 Intentional Program Violation (IPV); the OIG also requested that respondent be disqualified from receiving program benefits.
- 5) 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], [REDACTED].
- 6) OIG Agent [REDACTED] represented the Department at the hearing; respondent did not appear.
- 7) 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 over-issuance 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.

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, or intentionally withheld information with the intention to commit an IPV. Thus, the Department must not only prove that the respondent committed an act, but that there was intent to commit the act.

The Department has not met its burden of proof.

While the respondent may indeed not have reported evidence of new income in the form of child support, no DHS-1171 predating the time period in question was submitted to show that respondent did not report. As there is no evidence that respondent did not report, the undersigned cannot hold that she did not report income. Therefore, the undersigned can, at most, assign agency error to the facts of the case, as there is no evidence that respondent did not report.

The amount of requested recoupment is far below the agency error threshold during the time period in question; therefore, recoupment must be denied.

With regard to the FIP portion of the hearing, the hearing request is 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 decides the Department has not established that respondent committed an Intentional Program Violation of the FAP program.

Recoupment is DENIED.

The FIP portion of the hearing is DISMISSED without prejudice because the notice of hearing was returned by the Post Office as undeliverable.



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

Date Signed: 08/11/2010

Date Mailed: 08/11/2010

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.

RJC/dj

cc:



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