

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: 201011049
Issue No: 3052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 5, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 May 5, 2010. The Respondent [REDACTED] appeared and testified on behalf of her husband. Derrick Gentry, 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 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. Respondent was a recipient of FAP benefits during the period of 10/1/05 – 7/31/06.
3. 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.
4. Respondent did not report her household income in a timely manner because she was caring for her husband who was disabled and did not report her two teenage daughters who were working at [REDACTED]. The daughters began working two months after the application was filed.
5. The Respondent advised the Department of her daughter's employment when she reapplied for FAP and FIP on July 26, 2006.
6. As a result of the failure to report all household income, Department argues that respondent committed an IPV and received an overissuance of benefits in the amount of \$3,816.00 under the FS/FAP program.
7. The Respondent and the Department have agreed that the amount of the FS/FAP over-issuance of benefits received is correct.
8. The Department has not established that respondent committed an IPV.
9. The Department has established the amount of over-issuance incurred by respondent.

10. A notice of disqualification hearing was mailed to respondent at the last known address and was not returned by the US Post Office as undeliverable.
11. This was respondent's first Intentional Program Violation.

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 Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Program Reference Manual ("PRM").

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over issuance (OI). BAM 700, p. 1. DHS must inform clients of their reporting responsibilities and prevent OIs by following BAM 105 requirements informing the client of the requirement to promptly notify DHS of all changes in circumstances within 10 days. BAM 700, BAM 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.

BAM 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. 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. BAM 720, p. 6.

In the present case, the Department has established that respondent was aware of the responsibility to report all employment and income for persons living in the household and had no apparent limitations to fulfilling this requirement. However, Claimant testified credibly that she did not intentionally fail to report that her daughters were working and, unfortunately, lost track of her reporting while caring for her disabled husband. The Respondent was very stressed at the time and was required to take care of her husband who is disabled and clearly unintentionally overlooked reporting that her daughters were working. Since an IPV must be intentional, the respondent did not commit an IPV. There was an over-issuance of FS/FAP benefits in the amount of \$3,816 since the Claimant's daughters would have been mandatory house members. The Respondent does not dispute the amount of the over-issuance.

DECISION AND ORDER

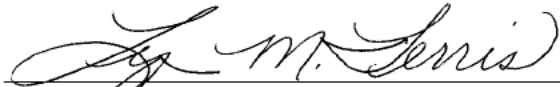
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent did not commit an IPV with regard to the FAP program.

However, the Department has established conclusively the amount that respondent received in over-issuance of FAP benefits. The Department is entitled to recoup from the respondent for the over-issuance of FAP benefits respondent ineligibly received. Therefore it is ordered that:

The Department is entitled to recoup the over-issuance of FAP benefits in the amount of \$3816.

The Department's request for an intentional program violation is DENIED/

The Respondent shall be required to reimburse the Department the FAP benefits ineligibly received in the amount of \$3816.00.



Lynn M. Ferris.
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/11/10

Date Mailed: 06/11/10

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.

LMF/dj

cc:

