

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.: 201011054
Issue No.: 3052,3055,3020
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 5, 2010
Wayne County DHS 17

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 appeared and testified. [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 after filing an application on June 1, 2006. Exhibit 1
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. The respondent's application for benefits indicated a "?" with regard to the question will any person begin a job before the end of the next calendar month. Exhibit 1 page 10
5. Respondent did not report her employment which caused a change in her household income in a timely manner.
6. The respondent was employed and working on the date of the FAP application but did not report her employment with [REDACTED]. Exhibit 2
7. The respondent also began employment with [REDACTED] on July 15, 2006 which was not reported to the Department. Exhibit 3
8. As a result of the failure to report all household income, Department argues that respondent committed an IPV during the period August 1, 2006 through May 31, 2007, and received an overissuance of benefits in the amount of \$1,114.00 under the FS/FAP program.
9. The only evidence available to support the overissuance claimed by the Department is a statement contained in the Office of Inspector General Investigation Report which stated "that the amount issued was \$1,214 and the lawful amount was \$100 and the alleged fraud was \$1,114". Exhibit 4
10. The Department has established that respondent committed an IPV.
11. The Department has not established that respondent incurred an overissuance.

12. 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.
13. 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 Program Administrative Manual ("PAM"), the Program Eligibility Manual ("PEM"), and the Program Reference Manual ("PRM").

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (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. Under BAM 720 the amount of the overissuance is the amount of benefits that group actually received minus the amount the group was eligible to receive. The Department must use the actual income for the overissuance month in determining the overissuance. At the hearing the Department failed to provide information regarding the actual income received in each of the relevant months. Therefore this Administrative Law Judge cannot make a finding regarding the overissuance amount.

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.

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.

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. The evidence offered by the Department through employment verifications provided by both employers's, demonstrate that the claimant did not report employment with [REDACTED] at the time of her application and never reported her employment and income with [REDACTED]. Exhibits 1-3. As a result, the respondent did commit an IPV.

The evidence presented with regard to the amount of the over issuance of FS/FAP benefits was not proved. The Department only submitted a statement as to the amount of the overissuance but did not demonstrate how the overissuance was determined. The Department did not provide explanation by way of FAP budget and overissuance summary to demonstrate an overissuance occurred. It is not enough to conclude an overissuance amount without demonstrating how it was determined. BAM 720 The only evidence available to support the overissuance is a statement contained in the Office of Inspector General Investigation Report

which state “that the amount issued was \$1,214 and the lawful amount was \$100 and the alleged fraud was \$1,114”. Exhibit 4 No doubt the claimant would have received a reduced amount of food stamps or no food assistance had her income been budgeted, but the exact amount of the overissuance for the period in question cannot be determined based on the evidence presented.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent did commit an IPV with regard to the FAP program. Accordingly, the respondent is disqualified from participation in the FAP program for a period of twelve (12) months. The Department’s request for a finding of an IPV is GRANTED.

However, the department has not established conclusively the amount that respondent received in overissuance of FAP benefits. Accordingly, the department’s request for recoupment is DENIED.



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

Date Signed: 06/21/2010

Date Mailed: 06/21/2010

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.

LFM/cjp

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cc:

