

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.: 201026150
Issue No.: 3052
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 21, 2010
Marquette County DHS (52)

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 claimant's request for a hearing. After due notice, a telephone hearing was held on July 21, 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 as 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. The OIG also alleged a duplicate receipt of benefits and sought a 10 year disqualification.
2. Respondent was a recipient of Michigan issued FAP benefits during the period of May 1, 2008 through July 31, 2008 when it is alleged that a member of her group [REDACTED] was a member of her FAP group and concurrently another FAP group receiving benefits also in Wisconsin.

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. The proofs showed that [REDACTED] received Medicaid benefits during a part of the time period in question but the Department did not demonstrate where this person resided or where the services were performed.
5. The Application in Wisconsin also indicated that [REDACTED] is a member of the Wisconsin FAP group for Shannon Wheelock.
6. No in-person contact was made with the Respondent to determine if Sage Wheelock was residing with Respondent's FAP group during the time period of the alleged concurrent receipt of benefits.
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 \$314.00 under the FAP program and \$60 in Medical Assistance over issuance.
8. The Department has not established that respondent committed an IPV.
9. The Department has not established a concurrent receipt of benefits per BEM 222 and BEM 720.
10. The Department is not entitled to an over issuance of benefits as the benefit sought to be recouped are under \$500 in total and the Department did not establish either an Intentional Program Violation or a duplicate receipt of FAP and MA benefits, thus the Department is not entitled to pursue the over issuance and recoupment.

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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to CML 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).

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 an 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 as presented does not establish a concurrent receipt of FAP benefits by the Respondent. No evidence was presented to establish whether the individual in question actually resided, in Michigan or Wisconsin. Given these facts it is equally likely that the child in question shown on both the Michigan and Wisconsin applications could have resided either place, and thus dual receipt of benefits by the respondent was not proved. If the child in question resided in Michigan, than there would be no improper receipt of benefits in Michigan This Administrative Law Judge is concerned that there is no evidence to establish where the

child, [REDACTED] resided and thus no concurrent receipt of benefits and no IPV has been established. That being the case the Department is not entitled to pursue recoupment as no overissuance has been established. 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 and that there was no concurrent receipt of benefits. Additionally the Department has not established an overissuance 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 or Medical Assistance, and that there was no concurrent receipt of benefits in two states established by the Respondent. The Department also did not establish an over issuance and thus is not entitled to recoupment.

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

It is ORDERED that the Department's request for a 10 year disqualification of benefits due to concurrent receipt of benefits in two states is DENIED.

It is further ORDERED that the Department's request for recoupment for FAP and MA benefit over issuances is DENIED.



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

Date Signed: 07/23/2010

Date Mailed: 07/23/2010

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.

LMF/jlg

cc:

