

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.: 2010-30093  
Issue No.: 1052, 3055  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: August 4, 2010  
Oakland County DHS (04)

**ADMINISTRATIVE LAW JUDGE:** Jan Leventer

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) Sections 400.9 and 400.37 and on the Department of Human Services' (DHS) request for a hearing. After due notice, a telephone hearing was held on August 4, 2010. Respondent did not appear. [REDACTED], appeared and testified for DHS.

**ISSUES**

1. Whether Respondent committed an Intentional Program Violation (IPV)?
2. Whether Respondent received an overissuance (OI) of benefits which DHS is entitled to recoup?

**FINDINGS OF FACT**

The Administrative Law Judge, based on competent, material, and substantial evidence in the record, and on the entire record taken as a whole, finds as fact:

1. DHS' Office of the Inspector General (OIG) filed a hearing request to establish an overissuance of benefits received by Respondent as a result of Respondent's allegedly having committed an IPV. The OIG also requests that Respondent be disqualified from receiving program benefits.
2. Respondent began receiving Food Assistance Program (FAP) benefits for herself and her son on May 4, 2006, and her benefits closed on or about November 7, 2007.

3. Respondent began receiving Financial Assistance Program (FIP) benefits for herself and her son on May 9, 2006, and her benefits closed on or about October 25, 2007.
4. Respondent has no apparent physical or mental impairment which limits her understanding or ability to fulfill DHS reporting requirements.
5. Respondent's son was enrolled at [REDACTED], in the 2006-2007 school year.
6. This is the first IPV allegation against Respondent.

### **CONCLUSIONS OF LAW**

FAP was 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. DHS administers the FAP program pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules (MACR) 400.3001-3015. Current DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT) which can be found online at [www.michigan.gov/dhs-manuals](http://www.michigan.gov/dhs-manuals).

FIP was established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 United States Code Sec. 601 *et seq.* DHS administers FIP pursuant to MCL 400.10 *et seq.*, and MACR 400.3101-3131. DHS' FIP policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). *Id.*

I turn to the question before me: is there clear and convincing evidence to prove that Respondent committed an IPV according to the law? DHS alleges Respondent unlawfully received FAP benefits of \$461 and FIP benefits of \$5,403. In this case, the applicable law is to be found in the DHS policies and procedures in effect during the relevant time period.

The DHS manual section that is applicable in this case is Program Administrative Manual (PAM) Item 720, "Intentional Program Violation," effective October 1, 2005. This version was in effect on May 4, 2006, when Respondent began receiving benefits for two people. PAM 720 is similar to the current policy, BAM 720, "Intentional Program Violation," which can be found online at [www.michigan.gov/dhs-manuals](http://www.michigan.gov/dhs-manuals).

I quote the language of PAM 720 in effect May 4, 2006:

### **Suspected IPV**

**Suspected IPV** means an OI exists for which all three of the following conditions exist:

- The customer intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, **and**
- The customer was clearly and correctly instructed regarding his or her reporting responsibilities, **and**
- The customer has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

IPV is suspected when the customer has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. There must be clear and convincing evidence that the customer acted intentionally for this purpose. PAM 720, effective October 1, 2005, p. 1. (Bold print and underlining in original.)

I have examined all of the documents and testimony presented in this case. There are three elements required to establish an IPV, and DHS must establish all three of them.

The first element is intentionally failing to report information, or reporting incomplete or inaccurate information. Based on my findings of fact above and all of the evidence in this case as a whole, I first conclude that Respondent did not fail to report information, nor did she report incomplete or inaccurate information, to DHS in May, 2006. First, there is no evidence that Respondent's son did not live with her in May, 2006, when she applied for benefits. Second, the record in this case does not contain the May, 2006, application, so I cannot determine what Respondent did or did not state at the time.

In addition, I have also considered the following: DHS records note that, in a phone call with DHS, the child's father stated he took custody of the child in March, 2006, because child custody was changed. However, I give the note only nominal credibility, as it is unsigned, and the record contains no court orders defining a change of custody and no school records from the 2005-2006 school year to establish that custody changed at that time. Second, the file note is dated October 8, 2007, and there is no contemporaneous evidence in the record for May, 2006. I am being asked to accept as

credible an unsigned note dated seventeen months after the time in question, reporting a telephonic statement of a person not present at the hearing. I find there is insufficient evidence to establish that Respondent intentionally failed to report information or gave inaccurate or incorrect information in May, 2006.

Although the record does not contain the May, 2006, application, it does contain Respondent's second application dated August 3, 2006. This application requests the following information from Respondent:

List yourself first and then all other persons who live in the home or are temporarily absent from your home.

Respondent listed her son in the space provided. There is nothing in the record to establish that Respondent's son did not live with her on that date. I find there is no evidence on which to conclude that Respondent intentionally failed to report information, or gave inaccurate or incorrect information, on August 3, 2006.

The next document in the record in this case is Respondent's third application, signed December 15, 2006. School records from the [REDACTED] indicate that her son was enrolled at [REDACTED], at that time. This DHS application again asks Respondent for the names of persons who live in the home or are temporarily absent from the home. Respondent listed her son in the space provided.

I do not know what "temporarily absent from the home" meant to Respondent, or what advice about this phrase the DHS specialist may have provided. Because custody with the father may have been temporary legal custody, Respondent may have answered this question truthfully. Also, this page of the application contains an obvious error that the specialist failed to correct, and, accordingly, I am reluctant to conclude that the application document is sufficiently reliable. The error is in Item 4, where Respondent identifies her son by name as "Disabled, blind or unable to work." I believe she should have checked the box, "Attending school," immediately above the other box. I conclude that Respondent did not intentionally fail to report information, or provide inaccurate or incomplete information, on December 15, 2006.

The third document in the record is Respondent's fourth DHS application, signed July 16, 2007. Evidence in the record establishes that Respondent's son was enrolled in Chaparral Elementary for the 2007-2008 school year, but this does not prove his whereabouts in the summer of 2007. I conclude there is insufficient evidence to establish that Respondent failed to report information, or gave incomplete or inaccurate information, to DHS on July 16, 2007, because it is entirely possible that Respondent's son came to Michigan and was living with Respondent for the summer vacation.

Therefore, with regard to the first element of an IPV, I conclude there is no clear and convincing evidence to establish that Respondent failed to report information needed to make a correct benefit determination, and, I further conclude there is no clear and convincing evidence to establish that Respondent gave incomplete or inaccurate information.

As I have determined that the first requirement for the establishment of an IPV has not been met, DHS cannot fulfill the PAM 720 requirement that all three elements of the IPV must be present. Even if I were to find that the second element is present and that Respondent was clearly and correctly advised regarding her reporting responsibilities, it would have no legal significance.

Finally, considering briefly the third IPV requirement, i.e., the absence of physical and mental impairment, based on my findings of fact above, I find and conclude that the third element has been met.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that DHS failed to establish by clear and convincing evidence that FAP and FIP IPV's occurred. DHS' request for an IPV finding is DENIED.

DHS has failed to establish by clear and convincing evidence that Respondent received an overissuance of FAP benefits in the amount of \$5,864.50. DHS' Request for recoupment is DENIED.



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Jan Leventer  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: August 9, 2010

Date Mailed: August 9, 2010

2010-30093/JL

**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.

JL/pf

cc:

