

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: 201030202

Issue No: 3055

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 8, 2010

Macomb 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 September 8, 2010. Respondent did appear at the hearing.

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 period of April 1, 2009 through September 30, 2009.
- 2) On January 29, 2009, respondent applied for FAP benefits.

- 3) Respondent's son was in the home at the time.
- 4) Respondent had no income at the time.
- 5) Respondent was awarded FAP benefits in the amount of \$367 based on a group size of 2.
- 6) \$367 is the maximum FAP allotment for a group size of 2.
- 7) On March 17, 2009, an order was issued in Macomb County Circuit Court awarding custody of the son to the son's biological mother.
- 8) Respondent reported the removal of the son from the home.
- 9) On May 1, 2009, respondent's FAP benefits were lowered to \$200.
- 10) \$200 is the maximum FAP allotment for a group size of 1.
- 11) Respondent had no income during this time period.
- 12) Respondent continued to receive \$200 in FAP benefits until October 1, 2009.
- 13) Respondent's FAP benefits were raised back to \$367.
- 14) Respondent's son had returned to the home at this time.
- 15) There is no evidence that respondent received any benefits for which he was ineligible.
- 16) On January 27, 2010, 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.
- 17) A Notice of Disqualification Hearing was mailed to respondent at the last known address and was not returned by the U.S. Post Office as

undeliverable. Respondent's last known address is: [REDACTED]

[REDACTED].

- 18) OIG Agent Thomas Walsh represented the Department at the hearing; respondent appeared and represented himself pro se.
- 19) 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).

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.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
 - (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).
 - (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).

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 withheld information, **for the purpose of committing an IPV**, with regard to the FAP program.

In this case, the Department has established that respondent was aware of the responsibility to report all changes, income, and employment to the Department. Respondent has no apparent physical or mental impairment that limits the

understanding or ability to fulfill the reporting responsibilities. However, the undersigned is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that the respondent failed to report a change of group size. In fact, the clear and convincing evidence of record shows that respondent not only reported the change in group size, but did not receive any benefits that he was ineligible for.

Respondent's son left the home on March 17, 2009. Respondent had 10 days to report this change. If respondent reported sometime after March 23, a very likely prospect, respondent's benefits would not have decreased until May 1. Non-income changes affect the next benefit month 10 days after the change is reported. BAM 220. Not surprisingly, respondent's benefits decreased on May 1, 2009. Respondent had been receiving \$367, the maximum FAP allotment for a group size of 2. On May 1, respondent's benefits decreased to \$200, the maximum FAP allotment for a group size of 1. Thus, the clear and convincing evidence shows that respondent's benefits changed due to a decrease in group size. The Department offered no evidence to show that respondent's benefits changed due to any other reason.

The Department argued that there was no evidence in the file to show that respondent reported; however, the burden of proof is not upon the respondent to prove his innocence; it is upon the Department to prove that the respondent committed the IPV. In the current case, that would mean affirmatively showing that respondent did not report a change in group size, perhaps through a later application that showed respondent was still reporting the son in the home. The Department may not rely on a lack of evidence to show a failure to report.

Furthermore, even if the undersigned were to assume that respondent did not report, the Department has failed to show that respondent received an over-issuance of

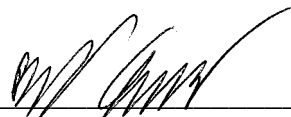
benefits. If respondent's group size decreased, respondent would have received \$200 in monthly FAP benefits. Respondent received \$200 in monthly FAP benefits, and continued to receive this amount until the boy was returned to the home in September. Therefore, there was no over-issuance, and thus, no IPV, over-issuance being a prerequisite to an IPV. BAM 700. The undersigned is aware of no policy that allows for all benefits to be recouped for any misrepresentation—policy explicitly holds that only those benefits that respondent ineligibly received as a result of the misrepresentation may be recouped. Even assuming that respondent lied about his group size, respondent was still eligible for a benefit amount for a group size of 1.

Therefore, as there is no evidence that respondent committed an IPV, much less received benefits he was not eligible for, and as there is clear and convincing evidence that respondent reported the change, and was not over-issued benefits, the undersigned holds that respondent did not commit an IPV, and was not over-issued benefits. Therefore, disqualification is improper and recoupment must be denied.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that respondent committed an Intentional Program Violation of the FAP program. There is no clear and convincing evidence that respondent received benefits he was not entitled to.

Recoupment is DENIED.



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

Date Signed: 09/17/10

Date Mailed: 09/21/10

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.

RJC/dj

cc:

