

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201030337
Issue No.: 1052; 3052
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: June 30, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne VanderHeide

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 June 30, 2010. The Respondent appeared and testified. Gary Shuk, 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 FIP and FAP benefits since 9/5/03.
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 Department asserts that Respondent did not report all of her household disability and child support income in a timely manner.

5. Respondent testified that she filed documentation of income that was available at the time of her application. (Exhibit 1, pp. 7-14).
6. The caseworker notes from the time of application indicate that child support was checked and had only been received for one month. (Exhibit 1, p. 14).
7. The Department discovered that Respondent did not accurately report all income in April and May of 2005. (Exhibits 2 and 3, pp. 15-17).
8. 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 \$4,168.00 under the FAP program and \$2,765.00 under the FIP program.
9. Respondent's Worker's Compensation case was redeemed in April of 2006 for \$18,500.00. Respondent testified that she wanted to repay the Department for benefits received and was informed that the Department held no liens for benefits paid.
10. The Office of Inspector General issued an investigative report recommending an IPV on 7/29/09. (Exhibit 1, p. 2).
11. The Department has not established that respondent committed an IPV.
12. The Department has established the amount of over issuance incurred by respondent.
13. 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.
- 14.
15. 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. The Family Independence Program ("FIP") was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq*. The Department of Human Services administers the FIP program pursuant to MCL 400.10, *et seq* and MAC R 400.3101-3131. The FIP

program replaced the Aid to Dependent Children (“ADC”) program effective October 1, 1996. Departmental policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Reference Tables (“RFT”).

A. IPV

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, 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 does not show clear and convincing proof that Respondent’s failure to report income was intentionally withheld for the purpose of maintaining public benefits. First, Respondent properly submitted all documentation that she had at the time of application. Respondent testified credibly that she lost documents due to a flood and subsequent water damage. At the time of application, Respondent provided a copy of the disability paystub that she had in her possession. The Department also checked for child support payments. Second, Respondent testified credibly that she attempted to repay the Department for benefits received upon redemption of her workers compensation case. The undersigned finds that Claimant did not intentionally withhold information and accordingly, did not commit an IPV.

B. Recoupment

- 1) Workers Compensation Redemption Hearing

Respondent argued that she should not be liable for recoupment, relying on an assertion, made at her workers compensation redemption hearing by a state employee, that there were no liens against her for past benefits paid. This argument fails for two reasons.

First, the state workers compensation representative at the hearing did not have any authority over DHS policy, including recoupment. Therefore, the individual representing the state could indicate what claims were currently pending against Respondent, but did not have authority to waive any future claims. At the time of the WC hearing, there was no pending recoupment action. The over-issuance was discovered in April and May of 2005. Because it was believed to be client error, the case was referred to the Office of Inspector General for Investigation. It is unknown when the case was referred to the OIG office; however, the OIG investigative report recommending an IPV hearing was not issued until 7/29/09. Accordingly, there would not have been any liens from the state at the time of Respondent's WC hearing.

Second, Respondent did not provide any binding evidence regarding the statement by a state employee. No written settlement agreement or hearing transcript was introduced as evidence by Respondent. In fact, Respondent testified that the information that she was relying on was not introduced on the record or contained in the settlement agreement. Instead it was discussed in negotiations. Therefore, it qualifies as "hearsay" pursuant to MRE 801 as the individual asserting the statement was not subject to cross examination. Additionally, the affidavits and letters from the Respondent's attorney are also hearsay as the attorney was not available at the hearing and subject to cross examination. Accordingly, this information is properly excluded as evidence and is not considered in this opinion.

2) Amount of Recoupment

The federal regulations define household income to include all earned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. PEM 550. Under 7 CFR 273.9, as amended, \$128.00 is deducted from the gross income of FAP recipients in determining FAP grants for a group size of 3 in 2003. Unearned income includes FIP benefits, disability payments (PEM 500, p. 33) and child support (PEM 500, p. 10). Under 7 CFR 273.9 deductions for excess shelter are also made. PEM 554. Id. There is a standard heat and utility deduction as well as a standard deduction for telephone bills. Id. The standard deductions are a set amount that is applied regardless of the actual expenses incurred by the Claimant.

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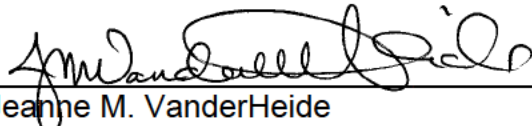
The undersigned has personally checked the FAP and FIP budgets provided by the Department in the calculation of over-issuance of benefits and finds that they are accurate.

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 overissuance of FAP benefits. Accordingly, the department is entitled to recoup the overissuance of benefits respondent ineligibly received.

/s/



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 24, 2010

Date Mailed: August 24, 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.

JV/hw

cc:

