

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.: 2010-37247
Issue No.: 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: October 6, 2010
DHS County: Saginaw

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 a request for a hearing made by the Office of the Inspector General (OIG) of the Department of Human Services (DHS). After due notice, a telephone hearing was held on October 6, 2010. Respondent did not appear. [REDACTED], appeared and testified on behalf of DHS.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?

FINDINGS OF FACT

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

1. In May 2007, Respondent began receiving FAP benefits from the State of Michigan.
2. On November 7, 2007, Respondent made two purchases in Michigan with her FAP benefits.
3. On or about November 14, 2007, Respondent moved to the [REDACTED].
4. Respondent failed to report her change of address to DHS.
5. Respondent left her FAP Electronic Benefits Transfer (EBT or Bridge) card in Michigan.

6. Respondent did not use her Bridge card outside of Michigan.
7. On November 14, 2007, Respondent was awarded food assistance benefits in [REDACTED].
8. From December 5, 2007, to March 13, 2008, a period of over three months, Respondent made approximately nine FAP purchases in [REDACTED] using her [REDACTED] food assistance program benefits.
9. On December 6, 2007, Respondent's Bridge card was used to make three purchases in Michigan.
10. On January 7 and 8, 2008, Respondent's Bridge card was used to make three purchases in Michigan.
11. On September 2, 2009, DHS sent Intentional Program Violation Repayment Agreements and Disqualification Consent Agreements, Forms DHS-4350 and DHS-830, to Respondent's address. Respondent failed to sign and return the documents.
12. On August 27, 2010, DHS mailed a Notice of Disqualification Hearing/Request for Waiver of Disqualification Hearing, Form DHS-827, to Respondent with accompanying documentation.
13. DHS requests a finding that Respondent is to repay FAP benefits for the two months of November and December 2007.
14. DHS' request a finding from the Administrative Law Judge that this is Respondent's second IPV, and the penalty for a second-time offense should apply to Respondent.

CONCLUSIONS OF LAW

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations found in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL Section 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-3015. DHS' current FAP policies and procedures are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT), which are online at www.mich.gov/dhs-manuals.

DHS alleges that, from November 1-December 31, 2007, a period of two months, Respondent committed an IPV in that she intentionally failed to report a change of

address. DHS alleges Respondent unlawfully received FAP benefits of \$324. DHS requests a finding of a FAP IPV and, in the event that the Administrative Law Judge makes this finding, DHS asks that Respondent be disqualified from receiving benefits for a second-time IPV offense.

I turn now to the first question this case presents: is there clear and convincing evidence to prove that Respondent committed an IPV according to law? I will consider whether the facts stated above meet the legal standards for an IPV. In this case, the applicable law is to be found in DHS' policies and procedures in effect during the relevant time period.

The DHS manual section that is applicable in this case is PAM Item 720, "Intentional Program Violation," which became effective October 1, 2007. This policy was in effect on November 1, 2007. It is similar to the current version, BAM 720, "Intentional Program Violation," which can be found online at www.michigan.gov/dhs-manuals.

I quote here from PAM 720, which was in effect on November 1, 2007, the relevant time period in this case:

Suspected IPV

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.

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 720, effective October 1, 2007, p. 1. (Bold print in original.)

I have examined all of the documents and testimony presented in this case. I begin by looking at the first requirement of IPV, which is intent. I must determine first whether Respondent intentionally failed to report information, in this case a change of address. However, if I determine that Respondent did not know she was required to report changes of address, then I cannot find she failed to do so intentionally. This inquiry requires me immediately to go to the second IPV requirement, which is whether Respondent was clearly and correctly instructed about her reporting responsibilities.

Having reviewed all of the testimony and documents in this matter, I find and determine that Respondent was clearly and correctly instructed regarding her reporting responsibilities. Respondent received a document titled "Acknowledgments" when she applied for benefits. This is DHS Form DHS-1171, consisting of four pages, and it is in evidence in this case. The acknowledgement states on page 1 that changes of address must be reported within ten days.

I conclude that DHS in this case has produced clear and convincing evidence that Respondent knew of her reporting responsibility. As I have here determined that Respondent had knowledge of her duties, which is the second IPV requirement, I now go back again to the first IPV element.

Regarding intent, the first IPV element, I find and determine that Respondent intentionally failed to report her change of address within ten days as required by DHS policy PAM 720. Respondent gave the OIG office no explanation for her failure to report her new address. I find and conclude that Respondent failed to report her change of address for the purpose of maintaining, and preventing the reduction of, FAP benefits. I find that the requirement of intent has been established by clear and convincing evidence in this case.

As I have examined the first two elements, I turn to the third and last element of IPV, which is incapacity. I find nothing in the record to indicate any physical or mental impairment that limits Respondent's understanding or ability to fulfill her reporting responsibilities. I conclude, therefore, that the third IPV element has been met, and I find that Respondent has no apparent physical or mental impairment that limits her understanding or ability to fulfill her reporting responsibilities.

Based on all of the evidence in this case taken as a whole, I find that Respondent intentionally failed to report a change of address. I conclude that DHS has established by clear and convincing evidence that Respondent intentionally committed an FAP IPV. DHS' request for a finding of FAP IPV is GRANTED.

Next, I will consider whether DHS has proved that Respondent is liable for purchases in Michigan in November and December 2007. Respondent's November purchases using


her Michigan Bridge card consist of two purchases made on November 7, 2007. As I have made a finding of fact that Respondent moved to [REDACTED] on November 14, 2007, I determine that the FAP purchases made in Michigan before that date are not overissuances and Respondent is not required to repay them. My ruling, therefore, is that Respondent's three FAP purchases in December 2007 in Michigan are the only overissuances that occurred in this case.

Looking next at DHS' request that the Administrative Law Judge find that this Respondent's second IPV, I find and conclude that there is nothing in the file to indicate that Respondent committed an IPV before this one. Accordingly, I decline to find that this is Respondent's second IPV and impose only a penalty as for a first-time offense.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that DHS has established by clear and convincing evidence that a first-time FAP IPV occurred in this case. DHS' request for a finding of IPV is GRANTED as to December 2007 only. DHS' request for a finding of a second-time offense is DENIED as DHS has failed to prove that Respondent committed a prior FAP IPV.

The Administrative Law Judge ORDERS that DHS may seek recoupment from Respondent for FAP benefits ineligibly received in December 2007 in the amount of \$162.


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

Date Signed: October 7, 2010

Date Mailed: October 7, 2010

2010-37247/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:

