

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.: 2010-38826
Issue No.: 3055, 4052
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 4, 2010
Marquette County DHS

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

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

ISSUES

1. Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and whether Respondent received an overissuance (OI) of benefits that DHS is entitled to recoup?
2. Whether Respondent committed an IPV of the State Disability Assistance (SDA) program and whether Respondent received an OI of benefits that DHS is entitled to recoup?

FINDINGS OF FACT

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

1. On September 11, 2007, Respondent applied for FAP and SDA benefits in Marquette County.
2. Respondent listed as her residence the [REDACTED], which is a substance abuse treatment center (SATC) in [REDACTED].
3. Respondent was never informed that she was to report changes in residence.

4. Respondent received FAP and SDA benefits through August 2008.
5. From September 27, 2007, to October 28, 2007, Respondent made twenty-six FAP purchases in the State of Michigan.
6. From November 8, 2007, to August 14, 2008, Respondent made ninety-nine FAP purchases in the State of West Virginia and none in the State of Michigan.
7. Respondent had no apparent physical or mental impairment that would limit her understanding or ability to fulfill a reporting requirement.
8. DHS' allegations of IPV and OI concern the nine-month period of December 2007 through August 2008.
9. As of July 22, 2009, Respondent resided in Saginaw County and was receiving DHS benefits in one or more programs.
10. A notice of disqualification hearing was mailed to Respondent at her last known address and was not returned as undeliverable by the U.S. Post Office.
11. DHS has not established that Respondent committed an IPV.

CONCLUSIONS OF LAW

FAP 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). DHS administers FAP pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules (MACR) 400.3001-3015. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

SDA, which provides financial assistance for disabled persons, was established in Michigan by 2004 Public Act 344. DHS administers SDA pursuant to MCL 400.10 *et seq.*, and MACR 400.3151-400.3180. DHS policies are found in BAM, BEM and RFT. *Id.*

However, the DHS policies and procedures in effect on September 11, 2007, are not available online. I will quote the applicable policy in this decision so that the parties can understand the basis of my decision.

The Policy Administrative Manual (PAM) Item 720, "Intentional Program Violation," which came into effect on April 1, 2007, and was in effect on September 11, 2007, explains that there are three requirements for a finding of IPV:

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 April 1, 2007, p. 1. (Bold print in original.)

I have examined all of the documents and testimony presented in this case. Considering first whether Respondent gave inaccurate or incomplete information on her application, I conclude she did not and, indeed, DHS is not asserting that she did so. Rather, DHS is asserting she failed to fulfill her reporting responsibilities in that she moved out of state without notifying DHS. DHS here is alleging she intentionally failed to report a change of residence and, in order to analyze this question, I must first determine what her reporting responsibilities were and whether she was clearly and correctly informed of her reporting responsibilities. I cannot consider her intent unless I determine what DHS expected of her and whether she knew what was expected of her.

This question brings me to the second IPV element, which is whether Respondent was clearly and correctly instructed regarding her reporting responsibilities. I have examined all of the documents in evidence in this case and I have found no language advising Respondent of her reporting responsibilities in these documents. Moreover, there is no

testimony in the record from any individual who states they advised her of any responsibilities.

I do note that the application states Respondent was given “a copy of the Acknowledgments, that explain additional information about applying for and receiving assistance benefits.” However, the “Acknowledgments” were not provided to the Administrative Law Judge as evidence at the hearing, and I do not know what requirements are listed in the Acknowledgments. Without more specific detail, I cannot say that DHS has submitted clear and convincing evidence to establish that Respondent was clearly and correctly instructed as to her reporting responsibilities.

I conclude that the second IPV element has not been met. DHS has not proved by clear and convincing evidence that Respondent was clearly and correctly advised of her reporting responsibilities. DHS’ request for a finding of IPV, therefore, is DENIED.

I further conclude that Respondent was not entitled to benefits from December 2007-August 2008 based on all of the evidence and testimony presented in this case. DHS has established by clear and convincing evidence that an OI occurred and DHS is entitled to recoup FAP benefits of \$1,458 and SDA benefits of \$396, totaling \$1,854.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, determines that an IPV has not been established. The Department’s request for an IPV is DENIED.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, determines that an overissuance of FAP and SDA benefits occurred and DHS is entitled to recoup it. The recoupment amounts are \$1,458 FAP and \$396 SDA benefits, totaling \$1,854.



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

Date Signed: August 10, 2010

Date Mailed: August 10, 2010

2010-38826/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:

