

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.: 2010-38829
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 presented 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 Intentional Program Violations (IPV) of the Food Assistance Program (FAP) and the Medical Assistance (MA or Medicaid) program?

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. On July 22, 2008, Respondent signed an application for FAP and MA benefits.
2. Also on July 22, 2008, Respondent received an "Information Booklet," DHS Form DHS-1171, stating she must report changes of address within ten days of the change.
3. Respondent began receiving FAP and MA benefits.
4. From December 9, 2008, to April 24, 2009, a period of five months, Respondent made seventy-four FAP purchases in the [REDACTED] using her Michigan FAP EBT ("Electronic Benefits Transfer" or "Bridge") card.

5. From December 1, 2008, to April 30, 2009, Respondent's group's medical expenses of \$2,274.86 were paid by the Medicaid program of the State of Michigan.
6. Respondent continued to receive FAP benefits until May 10, 2009, and MA benefits until April 30, 2009.
7. On March 17, 2010, 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.
8. On August 27, 2010, DHS issued a Notice of Disqualification Hearing/ Request for Waiver of Disqualification Hearing, Form DHS-827, and sent it to Respondent with accompanying documentation.
9. These are the first FAP and MA IPV allegations against Respondent.

CONCLUSIONS OF LAW

FAP was established by the United States 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 available online at www.mich.gov/dhs-manuals.

MA was established by Title XIX of the United States Social Security Act and is implemented by Title 42 of the Code of Federal Regulations. DHS administers MA pursuant to MCL 400.10, *et seq.*, and MCL 400.105. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). *Id.*

DHS alleges that, from December 1, 2000, through April 30, 2009, a period of five months, Respondent committed two IPV's by her intentional failure to report a change of address. DHS alleges Respondent unlawfully received FAP benefits of \$2,378 and MA benefits of \$2,274.86. DHS requests findings of FAP and MA IPV's and, in the event that the Administrative Law Judge makes these findings, DHS asks that Respondent be disqualified from receiving FAP and MA benefits for an IPV first-time offense.

I turn to the question before me: is there clear and convincing evidence to prove that Respondent committed the alleged Intentional Program Violations according to the law? In this case, the applicable law is to be found in DHS' policies and procedures in effect at the relevant time period.

The DHS manual section that is applicable in this case is BAM Item 720, "Intentional Program Violation," effective August 1, 2008. This version was in effect on December 1, 2008. It is similar to the current version of BAM 720, "Intentional Program Violation," which can be found online at www.michigan.gov/dhs-manuals.

I quote the language of BAM 720 in effect December 1, 2008:

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. BAM 720, effective August 1, 2008, 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, then I cannot find she intentionally failed to do so. 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 an Information Booklet which states on page 9 that changes of address must be reported within ten days. The paragraphs containing this information are marked with an "X" in the handwriting of an unknown person, and I determine that these marks were made by a DHS intake worker who emphasized this material specifically when Respondent applied for benefits. I determine that these markings by the DHS case worker are further evidence that Respondent personally received the Information Booklet and knew her responsibilities.

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 return once more 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 BAM 720. Respondent made all but one of her FAP purchases in [REDACTED] over a five-month period. She also made all of her FAP purchases in [REDACTED]s from November 4-27, 2008, before the alleged IPV time period, and all of her FAP purchases in [REDACTED] from May 4-10, immediately after the alleged IPV period. I conclude that this entire history of expenditures constitutes clear and convincing evidence that she moved to Illinois. I determine that, when Respondent failed to report her change of address, she did so for the purposes of maintaining, and preventing the reduction of, FAP and MA benefits. I find and conclude that intent has been established by clear and convincing evidence in this case.

As I have already examined the second element, whether Respondent knew of her reporting responsibility, 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 FAP and MA IPV. DHS' request for findings of first-time FAP and MA IPV are GRANTED.

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 first-time FAP and MA IPV's occurred in this case. DHS' request for a finding of first-time FAP and MA IPV's is GRANTED. The Administrative Law Judge ORDERS that Respondent shall reimburse DHS for FAP and MA benefits ineligibly received in the amounts of \$2,378 FAP and \$2,274.86 MA.



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

Date Signed: October 7, 2010

Date Mailed: October 7, 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.

JL/pf

cc:

