

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.: 2010-38931
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 Intentional Program Violations (IPV) of the Food Assistance Program (FAP) and the Medicaid-Eligibility (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 April 29, 2008, Respondent signed an application for FAP and MA benefits. Above her signature on the last page, Respondent certified that she received, reviewed, and agreed with the DHS Information Booklet, which states on page 9 that changes of address must be reported within ten days of the change.
2. On June 2, 2008, Respondent began receiving FAP and MA benefits.
3. From July 1, 2008-April 29, 2009, Respondent made 172 FAP purchases in the [REDACTED], and none in Michigan.
4. From August 1, 2008-April 30, 2009, DHS paid \$3,955.83 in MA benefits for Respondent.

5. Respondent continued to receive FAP and MA benefits until April 30, 2009.
6. On January 14, 2010, DHS sent Intentional Program Violation Repayment Agreements and Disqualification Consent Agreements, Forms DHS-4350 and DHS-830, to Respondent's Michigan address. Respondent failed to sign and return the documents.
7. 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.
8. This is the first IPV allegation against Respondent.

CONCLUSIONS OF LAW

FAP was established by the 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.

MA was established by Title XIX of the 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) which are online at www.mich.gov/dhs-manuals.

DHS alleges that, from September 1, 2008 through April 30, 2009, a period of eight months, Respondent committed an IPV in that she intentionally failed to report a change of address. DHS alleges Respondent unlawfully received FAP benefits of \$2,598 and MA benefits of \$3,955.83. DHS requests a finding of IPV of both the FAP and MA programs 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 IPV first-time offenses.

I now turn to this question: is there clear and convincing evidence to prove that Respondent committed IPV's according to law? In this case, the applicable law is to be found in the 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," which became effective August 1, 2008.

I quote here from BAM 720, which was in effect on September 1, 2008, the first date of the alleged IPV 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. 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 of the three requirements, or elements, of IPV as stated in DHS policy. This first requirement is that, during the hearing, DHS must prove Respondent's intent by clear and convincing evidence. I must, therefore, first determine whether Respondent intentionally failed to disclose information which, in this case, is a change of address. If I determine that Respondent did not intentionally fail to disclose a change of address, then DHS has not proved the first IPV element and I must deny DHS' request for IPV findings.

However, if I determine that Respondent did not know she was required to report changes, then I cannot find she had the intent not to do it. This question immediately leads me 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 and signed for the DHS Information Booklet when she applied for benefits on April 29, 2008. The Information Booklet states on page 9 that changes of address must be reported within ten days.

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

Regarding the first IPV element of intent, I find and determine that Respondent intentionally failed to report a change of address within ten days as required by BAM 720. Respondent made 172 FAP purchases in [REDACTED] in ten months, and in that same period, she made none in Michigan. I conclude that this history of expenditures constitutes clear and convincing evidence that Respondent moved away from Michigan and did not notify DHS of her departure from the [REDACTED] address. I find and conclude that Respondent failed to report a 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 the reporting responsibilities.

With regard to DHS' assertion of MA IPV, as the same elements must be proved, I find and conclude that DHS' FAP proofs constitute clear and convincing evidence that an MA violation occurred in this case as well. I determine that DHS has proven in this case that an MA IPV occurred.

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 FAP and MA IPV is 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 first-time MA IPV's occurred in this case. DHS' request for both IPV findings is GRANTED. The Administrative Law Judge ORDERS that DHS may seek reimbursement from Respondent of \$2,598 in FAP benefits and \$3,955.83 in MA benefits ineligibly received from September 1, 2008-April 30, 2009.



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:

