

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: 201042755  
Issue No: 3052  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 25, 2010  
Wayne County DHS

**ADMINISTRATIVE LAW JUDGE:** Gary F. Heisler

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a hearing was held on August 25, 2010. The notice sent to Respondent was returned by the US Postal Service as undeliverable. Respondent did not appear. In accordance with Program Administrative Manual (PAM) 720 the hearing proceeds on the Food Assistance Program (FAP) issue without Respondent but the Family Independence Program (FIP) issue will not be heard.

**ISSUE**

Whether respondent committed an Intentional Program Violation (IPV) and whether respondent received an overissuance of benefits that the department is entitled to recoup?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On March 10, 2000 Respondent submitted an application for Medical Assistance (MA), Food Assistance Program (FAP) and Child Development and Care (CDC) benefits. On that application Respondent showed that she was employed at [REDACTED]. Respondent signed the application acknowledging receipt and notice of all reporting requirements.
2. On January 2, 2003 Respondent submitted an application for Medical Assistance (MA) and Food Assistance Program (FAP) benefits. Respondent

did not indicate any form of employment income. Respondent signed the application acknowledging receipt and notice of all reporting requirements.

3. On January 9, 2004 Claimant submitted an application for Medical Assistance (MA) and Food Assistance Program (FAP) benefits. Respondent marked the application indicating there was no employment income in the household. Respondent signed the application acknowledging receipt and notice of all reporting requirements.
4. In April 2004 the Department received verification that Claimant had been continuously employed at [REDACTED] from September 1998.
5. On August 13, 2004 the Department calculated that Claimant had been over-issued Family Independence Program (FIP) and Food Assistance Program (FAP) benefits during the period January 1, 2001 through August 31, 2001. They also calculated an over-issued Food Assistance Program (FAP) benefits during the period May 1, 2003 through January 31, 2004.
6. On August 24, 2004 the Departments Office of Inspector General sent their case to the Attorney General.
7. On April 22, 2010 the matter was sent to State Office of Administrative Hearings and Rules for an IPV hearing.

### **CONCLUSIONS OF LAW**

The Food Assistance Program (FAP) (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 or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the department has asked that respondent be disqualified from receiving benefits. The department's manuals provide the following relevant policy statements and instructions for department caseworkers:

#### **PAM 720 INTENTIONAL PROGRAM VIOLATION**

#### **DEPARTMENT POLICY**

### **All Programs**

Recoupment policies and procedures vary by program and overissuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

[PAM 700](#) explains OI discovery, OI types and standards of promptness.

[PAM 705](#) explains agency error and [PAM 715](#) explains client error.

### **DEFINITIONS**

#### **All Programs**

**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.

#### **FAP Only**

IPV is suspected for a client who is alleged to have trafficked FAP benefits.

#### **IPV**

##### **FIP, SDA and FAP**

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms.

Clear and convincing evidence is evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

In this case the Department asserts Respondent failed to report employment to the Department. An application dated March 10, 2000 shows that Respondent applied for CDC benefits and reported employment. In the explanation of circumstances the Department wrote that Respondent received CDC benefits from June 2000 to August 2000 when it appears she stopped working. The Department also asserts Respondent returned to work December 1, 2000 and the agency was not aware of her return to work until August 2001. The Department has submitted evidence showing that Respondent earned wages between December 1, 2000 and August 31, 2001 and that she was receiving FAP benefits based on no earned income. However, there is no evidence in the record to support the assumption that Respondent intentionally failed to report the resumption of employment. There are other valid, possible explanations for the circumstances such as the case worker did not act on information reported. There is no clear and convincing evidence in the record that Respondent committed an intentional program violation during the period 1/1/01-8/31/01.

The Department also asserts that Respondent committed an intentional program violation during the period May 1, 2003 through January 31, 2004. The Department has presented an application Respondent submitted on January 2, 2003 which indicated there was no earned income in the household. Respondent signed the application acknowledging receipt and notice of all reporting requirements. The Department also submitted evidence showing that Respondent was not receiving wages in January or February 2003. The wage information submitted does show that Respondent began receiving wages again in April 2003 and continuing on until April 2004. The Department submitted evidence showing Claimant received FAP benefits during that period based on no earned income. The Department submitted an application Respondent submitted on January 9, 2004 on which she specifically indicated there was no earned income in the household. Respondent’s signature on the January 9, 2004 application is clearly fraud. However, there is no evidence in the record to support the assumption that Respondent intentionally failed to report the resumption of employment in April 2003. There are other valid, possible explanations for the circumstances such as the case worker did not act on information reported. There is no clear and convincing evidence in the record that Respondent committed an intentional program violation during the period 5/1/03-12/31/03.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the clear and convincing evidence, decides the following:

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Respondent did receive a considerable over-issuance of benefits between December 2000 and April 2004.

Respondent did commit an intentional program violation in January 2004 when she signed and submitted an application stating she was not employed.

The Department has not met its evidentiary burden under BAM 720, to establish an intentional program violation was committed. The Department's action is not upheld.

/s/

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Gary F. Heisler  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: October 18, 2010

Date Mailed: October 18, 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.

GFH/vc

cc:

