

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. 2010-43137
Issue No. 3055
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: September 29, 2010
Office: Wayne County DHS (73)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon a request by DHS for an administrative hearing. After due notice, a telephone hearing was held on September 29, 2010. On behalf of Department of Human Services (DHS), [REDACTED], Regulation Agent, appeared and testified. Respondent failed to appear.

ISSUES

1. Whether DHS established that Respondent committed an intentional program violation (IPV) in receipt of Food Assistance Program (FAP) benefits.
2. Whether DHS established that Respondent is responsible for the repayment of over-issued FAP benefits.

FINDINGS OF FACT

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

1. Respondent completed an Assistance Application (Exhibit 1) on 6/29/05.
2. On Respondent's application, Respondent reported "no earnings" and no loss of employment in the 30 days prior to the application date.
3. DHS found Respondent eligible to receive FAP benefits from 7/05-6/06.
4. DHS budgeted \$0 in employment income in determining Respondent's eligibility for FAP benefits from 7/05-6/06.

5. Respondent was over-issued \$1850 in FAP benefits because of Respondent's intentional failure to report employment income.
6. DHS requested a hearing concerning an IPV and recoupment of over-issued FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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 (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB). At the time of Respondent's alleged violation, DHS policies were found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Respondent was not present for the hearing. DHS established that a Notice of Hearing was mailed at the last known address listed with the Secretary of State.

This hearing was requested by DHS to establish that Respondent committed an IPV. DHS may request a hearing to establish an IPV and disqualification. PAM 600 at 3.

Intentional Program Violation (IPV) is suspected when a client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. There must be clear and convincing evidence that the client acted intentionally for this purpose. PAM 720 at 1.

A clear and convincing threshold to establish IPV is a higher standard than a preponderance of evidence standard and less than a beyond any reasonable doubt standard. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

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. PAM 720 at 1.

The Code of Federal Regulations also defines an IPV. Intentional Program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16(c).

Respondent's signature on an Assistance Application is an affidavit. The affidavit portion of an Assistance Application reads, "I certify, under penalty of perjury, that all of the information that I have written on this form or told to a specialist is true. I understand that I can be prosecuted for perjury if I have intentionally given false information. I also know that I may be asked to show proof of any information I have given. I also know that if I have intentionally left out any information or if I have given false information, which causes me to receive assistance I am not entitled to or more assistance than I am entitled to, I can be prosecuted for fraud and/or required to repay the amount wrongfully received."

Respondent's signature on an Assistance Application is also an acknowledgement that Respondent was given the Acknowledgements attached to the Assistance Application. A portion of the Acknowledgements explain the expected reporting requirement to clients. Part of that requirement is to report starting or stopping income to DHS.

Respondent's signature dated 6/29/05 on the Assistance Application is sufficient verification that Respondent was instructed concerning reporting responsibilities. Also, there was no evidence that would indicate Respondent had any disabilities or impairments which would cause Respondent to fail to meet the required reporting responsibilities.

In the present case, DHS alleged that Respondent purposely failed to report employment from [REDACTED] from 4/1/05 to 6/30/06. DHS verified Respondent's employment income from an IG-001 Employee Wage History (Exhibit 2) obtained from Respondent's Social Security number. The report verified that Respondent received the following gross earnings within the following time periods:

4/05-6/05	\$1339.50
7/05-9/05	\$3394.14

201043137/CG

10/05-12/05	\$5251.78
1/06-3/06	\$5442.53
4/06-6/06	\$5406.65

As evidence of Respondent's misreporting, DHS provided an Assistance Application (Exhibit 3) signed and dated by Respondent on 6/29/05 and again on 6/30/06. Respondent wrote that he had "no earnings" in the application.

DHS issued Respondent's FAP benefits from the period of 7/05-6/06 without budgeting Respondent's employment. DHS did so based on Respondent's own statement from his Assistance Application that he was not working. DHS established that Respondent was employed at time he completed his Assistance Application.

Based on the submitted evidence, the undersigned is inclined to find that Respondent intentionally withheld employment information from DHS. Respondent failed to list any employment on 6/29/05 dated Assistance Application. The IG-001 established that Respondent received employment income within the three months prior to and after Respondent submitted the Assistance Application to DHS. It is highly probable that Respondent was employed on 6/30/05, the date he applied for FAP benefits.

The undersigned considered the possibility that Respondent had employment earnings early in the 4/05-6/05 quarter but none at the time of application. To give Respondent the benefit of this doubt, Respondent would had to have been laid-off from [REDACTED] for the period of approximately 5/05-6/05 and Respondent apply for FAP benefits during a lay-off period. This scenario seems unlikely as Respondent also stated in the application that he did not lose employment in the 30 days prior to his application date. Further, this scenario would not explain why Respondent would not have been employed in 6/2006 when the application was resigned and dated or excuse Respondent receiving FAP benefits for one year without the employment income being budgeted. Based on the totality of the presented evidence, it is found that Respondent committed an IPV.

If an IPV is established, the following disqualification periods apply: one year for the first IPV, two years for the second IPV and lifetime for a third IPV. PAM 720 at 13. The present case involves Respondent's first IPV. Thus, a disqualification period of one year is applicable.

DHS presented FAP budgets (Exhibit 4) for the over-issuance period which determined Respondent's FAP benefit issuances and the amount Respondent should have received had Respondent's employment been properly reported. It should be noted that IPV budgets do not give clients a 20% disregard for employment income because the income was not properly reported. PEM 556 at 3.

201043137/CG

The original DHS budgets calculated an over-issuance of \$3383 in FAP benefits. During the hearing, DHS conceded an error in the 12/2005 FAP budget which reduced the initially calculated over-issued amount. The corrected budget calculated that Respondent received \$1850 in FAP benefits during the over-issuance period but Respondent was only entitled to \$30 in FAP benefits. The total over-issuance is \$1820. The OI budgets appear to be otherwise correct and accurate. It is found that Respondent is responsible for repayment of \$1820 in over-issued FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that Respondent committed an intentional program violation by failing to report employment earnings. It is further found that Respondent's IPV cause an over-issuance in the amount of \$1820 of FAP benefits. It is ordered that DHS may disqualify Respondent for one year and seek recoupment in the amount of \$1820.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/27/2010

Date Mailed: 10/27/2010

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.

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