

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.: 2010-43139
Issue No.: 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 29, 2010
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) by failing to report employment information.
2. Whether DHS may recoup over-issued FAP benefits from Respondent.

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 was an ongoing FAP recipient.
2. Respondent was employed with [REDACTED] and received income from [REDACTED] from 12/17/04 through 8/11/07 but received no payments between pay periods ending 10/28/06-3/10/07.
3. Respondent submitted an Assistance Application to DHS on 10/30/2006 and did not list any employment with [REDACTED].

4. Respondent received a total of \$1222 in FAP benefits between 2/05-4/05 and 4/07-8/07.
5. Had DHS properly budgeted Respondent's [REDACTED] income for the benefit months 2/05-4/05 and 4/07-8/07 Respondent would have received a total of \$0 in FAP benefits.
6. DHS requested a hearing alleging that Respondent committed an IPV and seeking recoupment of \$1222 in allegedly 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 10/30/06 on the Assistance Application (Exhibit 2) is sufficient verification that Respondent was instructed concerning a DHS client's 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 failed to report employment earnings from [REDACTED] between 12/11/2004 through 8/11/2007. As proof of Respondent's alleged IPV, DHS submitted the Assistance Application signed by Respondent on 10/30/2006 which failed to list any employment earnings for Respondent. DHS also submitted Respondent's work history with [REDACTED] (Exhibit 1) as verified by the

Worknumber. The Worknumber verification showed employment earnings for Respondent from 12/2004 through 8/2007; however, Respondent's employment earnings were not continuous. The Worknumber verification showed Respondent did not receive income from [REDACTED] between 10/28/2006-3/3/07.

In response to the Assistance Application question, "In the last 60 days has anyone: refused work, reduced the number of hours worked, quit a job, been laid off or been fired?" Respondent checked "no". Respondent's response to this question tends to show misreporting of information but is not enough to establish that an IPV occurred. It is found that DHS failed to establish an IPV by Respondent.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). PAM 700 at 1. An OI is the amount of benefits issued to the benefit group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

An OI caused by client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. *Id.* at 5. Note that an over-issuance of benefits caused by client error is not an allegation that the misreporting was done intentionally. OIs are not established if the OI amount is less than \$125. *Id.* at 7.

In the present case, DHS alleges that Respondent received a total of \$1222 in over-issued FAP benefits between 2/1/05-4/30/05 and 4/1/07-8/31/07 combined. Whether the error was DHS or client caused is irrelevant as DHS may recoup the benefits in either circumstance. DHS provided FAP budgets (Exhibit 4) verifying that Respondent received a total of \$1222 in the benefit months described and would have received \$0 FAP benefits had DHS properly budgeted Respondent's employment income. The OI budgets appear to be 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 did not commit an intentional program violation by failing to report employment earnings. It is further found that Respondent received \$1820 in over-issued FAP benefits for the benefit months 2/05-4/05 and 4/07-8/07.

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It is ordered that DHS may seek recoupment in the amount of \$1820 for the over-issued FAP benefits.

Christian Gardocki

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

Date Signed: 11/01/2010

Date Mailed: 11/01/2010

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.

CG/jlg

cc:

