

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201043708
Issue No: 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 2, 2011
Isabella County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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' request for a disqualification hearing. After due notice, a telephone hearing was held on February 2, 2011. Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e). MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Did the respondent commit an Intentional Program Violation (IPV) and did the respondent receive an over-issuance 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) Respondent was a recipient of FAP benefits during the period of June 1, 2007 through September 30, 2007.

- 2) On May 14, 2007, respondent filed a DHS-1171, requesting FAP benefits.
- 3) Respondent reported on this application that he was not receiving employment income.
- 4) A Wage Match inquiry later revealed that respondent was employed with [REDACTED] from 2Q 2007 through 3Q 2007.
- 5) Respondent was receiving FAP benefits during this time.
- 6) Respondent was aware of the responsibility to report all employment and income to the Department.
- 7) On April 30, 2010, the Department's Office of Inspector General (OIG) filed a hearing request to establish an over-issuance of benefits received by respondent as a result of respondent having committed an Intentional Program Violation (IPV); the OIG also requested that respondent be disqualified from receiving program benefits.
- 8) A Notice of Disqualification Hearing was mailed to respondent at the last known address and was returned by the U.S. Post Office as undeliverable. Respondent's last known address is: [REDACTED].
- 9) OIG Agent Thomas Lilienthal represented the Department at the hearing; respondent did not appear.
- 10) This is respondent's first alleged IPV.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In this case, the Department has requested a disqualification hearing to establish an over-issuance 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:

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.

Intentional Program Violation (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. PAM, Item 720, p. 1.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation 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 (access device). 7 CFR 273.16(c).

- (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent **intentionally** made a false or misleading statement for the purpose of committing an IPV.

In this case, the Department has established that respondent was aware of the responsibility to report all income and employment to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. However, there is no clear and convincing evidence that the respondent intended to mislead the Department with regard to his FAP eligibility.

Respondent told the Department in May 2007 that he was not employed. Had the respondent started employment before he had filed his application and failed to report the income, the underlying issue would have been a clear falsehood on his application, and the Administrative Law Judge would hold that there would be no doubt as to whether the respondent intentionally meant to mislead the Department versus a simple lapse of memory. However, respondent's application was filed at least one month before he was employed; there is no clear and convincing evidence that respondent intended to withhold his employment information with the intent of receiving

more benefits to which he was entitled—the definition of an IPV. Furthermore, there is no evidence as to what date respondent started his employment; the undersigned cannot find respondent's failure to report his employment was intentional, if there is no evidence of the specific date that the respondent started his job. At most, the facts before us show client error; there is no clear and convincing evidence of an IPV.

The standard for an IPV is very high; mere likelihood that a respondent intended to mislead the Department is not enough. The burden of proof for an IPV is clear and convincing evidence; that is, the evidence must clearly and convincingly show that a respondent intended to withhold evidence. That evidence is lacking in this case, and therefore, the Administrative Law Judge cannot find IPV.

Furthermore, the prerequisite for an IPV, client error, or agency error is proof of an actual over-issuance of benefits. Even if the Department presents clear and convincing evidence that the respondent intended to defraud the Department, without proof of an actual over-issuance, there can be no Intentional Program Violation and recoupment of benefits. The same standard holds for agency error and client error; there can be no error or recoupment without first proving, through clear and convincing evidence, the amount of that recoupment.

Therefore, the Department must first establish, by clear and convincing evidence, that an over-issuance occurred and the amount of that over-issuance. Where the Department is unable to or fails to prove the amount of over-issuance, no over-issuance can be said to have occurred.

In calculating the amount of over-issuance, if improper reporting or budgeting of income caused the over-issuance, the Department should use actual income for the

over-issuance month for that income source, converting to a monthly amount if appropriate. PAM, Item 705, p. 6.

In the present case, the only evidence supplied by the Department in support of the over-issuance amount that it seeks to recoup is an UB-120 Quarterly Wage Match report that breaks down respondent's income by quarter. The Department did not supply any evidence showing the respondent's actual monthly, as opposed to quarterly, income during the alleged fraud period.

A review of the FAP budgets supplied by the Department shows that the budget calculations were achieved by averaging out respondent's quarterly income over the quarter. However, the actual income, or proof of the actual income, is not in the hearing record. Averaging quarterly income is not supported by policy. Policy requires that actual income be used. There is no evidence to show what respondent made exactly during a month, and there is no evidence that shows that respondent was actually ineligible for benefits during a month. Averaging quarterly income is at most, a best guess by the Department as to what respondent actually made, and is in no way evidence of respondent's actual income. Without this crucial evidence that would show and confirm respondent's actual monthly income during the alleged over-issuance period, the Administrative Law Judge cannot accept as fact the income amounts in the provided FAP budgets. As such the Department supplied FAP budgets in support of the alleged over-issuance amount are invalid, and cannot be used to show an over-issuance amount.

For those reasons, the undersigned must hold that the Department has failed to prove through clear and convincing evidence the amount of the over-issuance or whether recoupment is proper.

The Administrative Law Judge acknowledges that when there is unreported or unbudgeted income, there will probably be some degree of benefit over-issuance; this is not always the case, however. The Department must provide clear and convincing evidence to establish the over-issuance and the amount of over-issuance that it seeks to recoup. Without an over-issuance, there can be no IPV, client error, or agency error. Failure to fulfill this evidentiary requirement must therefore result in a finding of no error. Thus, the undersigned must hold that there is no clear and convincing evidence that the respondent committed an Intentional Program Violation, and the Department has failed to prove a proper recoupment amount.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established the over-issuance amount; therefore, the Department may not recoup the requested amount of \$1,056.00 in FAP benefits. Additionally, the Department also has not established that the respondent committed an Intentional Program Violation of the FAP program.

Recoupment is DENIED.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 02/15/11

Date Mailed: 02/16/11

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.

RJC/dj

cc:

