

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.: 2010-43906
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: December 15, 2010
DHS County: Shiawassee (76)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and the Department of Human Services' (DHS) request for a hearing. After due notice, a telephone hearing was held on December 15, 2010. Respondent [REDACTED] did not appear. [REDACTED], appeared and testified on behalf of DHS.

ISSUE

Whether DHS has proven by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?

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 June 13, 2007, Respondent signed an application for FAP benefits. Her signature appears immediately under this printed statement:

IMPORTANT: YOU MUST SIGN THE APPLICATION
I certify that I have received and reviewed a copy of the Acknowledgments, that explains additional information about applying for and receiving assistance benefits. Department Exhibit 1, p. 25 (bold print in original).

2. From December 12, 2007-February 26, 2008, Respondent was employed at [REDACTED], as a Manager earning \$375 per week.
3. Respondent did not report her income from [REDACTED], to DHS.

4. On October 26, 2009, DHS sent Respondent an IPV Repayment Agreement and requested her signature. Respondent failed to sign the Repayment Agreement.
5. On November 15, 2010, DHS sent a hearing notice to Respondent notifying her of the December 15, 2010, hearing date.

CONCLUSIONS OF LAW

FAP was established by the U.S. 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 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3001-400.3015. DHS' FAP policies and procedures are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

In this case, DHS has requested a finding of IPV of the FAP program and, in the event that the Administrative Law Judge makes this finding, DHS asks that Respondent be disqualified from receiving benefits. DHS requests the penalty for a FAP first-time offense in this case.

The applicable manual section in this case is Program Administrative Manual (PAM) 720, "Intentional Program Violation," which was adopted on April 1, 2007, and was in effect on June 13, 2007, the date Respondent signed the DHS application. PAM 720 is an earlier version of the current BAM 720, "Intentional Program Violation," which is available online. *Id.*

The definition of IPV is similar in the earlier and the current versions of this manual. However, the 2007 PAM 720 Item is not available online. I quote PAM 720 here for reference.

PAM 720 sets forth the definition of IPV in effect on June 13, 2007, on pages 4-5:

INTENTIONAL PROGRAM VIOLATION

DEFINITIONS

All Programs

Suspected IPV

Suspected IPV means an OI [overissuance] 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 [Child Development and Care] provider has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM 720, p. 1 (bold print in original).

In this case, I must apply PAM 720 to the facts to determine if all three of the elements of the IPV have been met. I begin with the first element, which requires that the client must have intentionally failed to report information or intentionally given incomplete or inaccurate information needed to make a correct benefit determination. If I determine that any piece of the first requirement did not occur, I must find that the first element has not been met. Furthermore, PAM 720 requires that all three requirements be met. So, if the first element or any other element is not met, then I must find that DHS has failed to prove IPV by clear and convincing evidence and DHS' request must be denied.

With regard to the first element, I find that I must determine only whether Respondent failed to report information, as there is no allegation that she reported incomplete or inaccurate information when she applied. In order to determine whether she failed to report information intentionally, I must move to the second element, knowledge of responsibility, because if Respondent had no knowledge of her responsibility to report income, she cannot be found intentionally to have failed to do so.

I have examined all of the evidence and testimony in this case. I find that Respondent was awarded benefits in 2007 and was fully knowledgeable about her reporting responsibilities. Respondent received the Acknowledgments materials at the time she signed the DHS application, and this is established by her signature on the application. I find this is clear and convincing evidence that she was informed about her responsibility to report changes of income within ten days.

Returning back to the first element, as I have found that Respondent knew her responsibility, I now find and conclude that she failed to report income to DHS in violation of her responsibility to report changes in income within ten days of the change. I find that Respondent, by her intentional failure to report income, committed an IPV. DHS has presented clear and convincing evidence to establish that the first two

elements of the IPV are met. I now turn to the third element, mental and physical impairment, to see if DHS has established this element as well.

Again, having reviewed all of the testimony and evidence in this case as a whole, I find nothing in the record to indicate that Respondent has a mental or physical impairment that limited her understanding or ability to fulfill her reporting responsibilities. Therefore, I find and conclude that DHS has established the third IPV element by clear and convincing evidence.

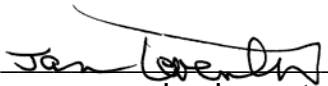
In conclusion, as all three of the elements of the IPV have been established by clear and convincing evidence, I find and decide that an IPV of the FAP program has occurred. DHS' request for an administrative hearing decision of IPV of the FAP program is GRANTED.

I next turn to the penalty DHS has requested in this case, which is a first-time penalty for IPV of FAP. I find that the record does establish that a first-time penalty is appropriate, as there is no allegation that Respondent committed previous IPV's.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, GRANTS DHS' request for a finding of IPV of FAP. IT IS ORDERED that the penalty shall be the penalty for a first-time IPV.

IT IS FURTHER ORDERED that DHS is entitled to recoup the FAP overissuance to Respondent of \$1,012. DHS shall proceed in accordance with all policies and procedures.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 21, 2010

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Date Mailed: December 22, 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:

