

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.: 2010-43931
Issue No.: 1052
Case No.: [REDACTED]
Hearing Date: December 15, 2010
DHS County: Shiawassee

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 Respondent committed an Intentional Program Violation (IPV) of the Family Independence Program (FIP)?

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 February 9 and 12, 2009, Respondent signed an application for FIP benefits. Her signature appears immediately under this printed statement:

Affidavit

IMPORTANT: Before you sign this application READ the affidavit.

Under penalties of perjury, I swear that this application has been examined by or read to me, and, to the best of my knowledge, the facts are true and complete. If I am a third party applying on behalf of another person, I swear that this application has been examined by or read to the applicant, and, to the best of my knowledge, the facts are true and complete.

I certify that I have received a copy, reviewed and agree with the sections in the assistance application **Information Booklet** explaining how to apply for and receive help: Programs, Things You Must Do, Important Things to Know, Repay Agreements, Information About Your Household That Will be Shared.

I certify, under penalty of perjury, that all the information I have written on this form or told (sic) my DHS specialist or my representative is true. I understand I can be prosecuted for perjury if I have intentionally given false or misleading information, misrepresented, hidden or withheld facts that may cause me to receive assistance I should not receive or more assistance than I should receive. I can be prosecuted for fraud and/or be required to repay the amount wrongfully received. I understand I may be asked to show proof of any information I have given. Department Exhibit 1, p. 31. (Bold print in original.)

2. DHS awarded FIP benefits to Respondent.
3. From February 28-August 28, 2009, Respondent was employed at [REDACTED].
4. Respondent failed to report her income to DHS.
5. On March 24, 2010, DHS sent Respondent an IPV Repayment Agreement and requested her signature. Respondent failed to sign the Repayment Agreement.
6. On November 15, 2010, DHS sent a hearing notice to Respondent notifying her of the December 15, 2010, hearing date.

CONCLUSIONS OF LAW

FIP was established by the U.S. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 United States Code Sec. 601 *et seq.* DHS administers FIP pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3101-400.3131. DHS' FIP policies 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 requests a finding of IPV of the FIP program and, in the event that the Administrative Law Judge decides that an IPV occurred, DHS asks that Respondent be disqualified from receiving benefits. DHS requests the penalty for a FIP first-time offense against Respondent.

The applicable manual section in this case is BAM 720, "Intentional Program Violation," which was adopted on January 1, 2009, and was in effect on February 12, 2009, the

date Respondent signed the application. It is the same as the current, online version.
Id.

BAM 720 sets forth the definition of IPV in effect on February 12, 2009, on page 1:

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. BAM 720, p. 1 (bold print in original).

In this case, I must apply BAM 720 to the facts to determine if all three 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, BAM 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. If this is my finding, then DHS' request for an administrative hearing decision of IPV 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 as a whole. I find that Respondent was awarded benefits in 2009 and was fully knowledgeable about her reporting responsibilities. Respondent received the Information Booklet 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 duty 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 it within ten days. I find that Respondent, by her intentional failure to report income, committed an IPV.

In this case, I find that DHS presented clear and convincing evidence to establish that the first two elements of IPV are met. I now turn to the third element, mental or 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 the reporting responsibilities. Therefore, I find and conclude that the third IPV element has been satisfied by clear and convincing evidence by DHS.

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 FIP program has occurred. DHS' request for an administrative hearing decision of IPV of FIP is GRANTED.

I next turn to the penalty DHS requested in this case, which is the first-time penalty for IPV. I find that the record does establish that a first-time penalty is appropriate, as there are no allegations 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 FIP. IT IS ORDERED that the penalty for the FIP IPV shall be the penalty for a first-time offense.

IT IS FURTHER ORDERED that DHS is entitled to recoup the FIP overissuance of \$1,686 from Respondent. DHS shall proceed in accordance with all policies and procedures.

IT IS SO ORDERED.



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

Date Signed: December 21, 2010

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:

