

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No. 2010-48305
Issue No. 3055
Case No. [REDACTED]
Hearing Date: June 29, 2011
Macomb (20)

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 Office of the Inspector General's (DHS OIG) request for a hearing. After due notice, a telephone hearing was held on June 29, 2011. [REDACTED], DHS OIG Agent, appeared and testified on behalf of the Department of Human Services (DHS). The Respondent did not appear.

ISSUE

Whether there is clear and convincing evidence to establish 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. From May, 2006-December, 2008, DHS provided FAP benefits to Respondent.
2. From December 20, 2007-December 20, 2008, DHS provided Family Independence Program (FIP) benefits to Respondent.
3. From August 26, 2008- January 3, 2009, Respondent was employed as a [REDACTED]
4. On December 4, 2008, Respondent withdrew from FAP and FIP.

5. On January 20, 2010, DHS sent Respondent an IPV Repayment Agreement for the FIP and FAP programs and requested his signature. Respondent failed to sign the Repayment Agreement.
6. On May 23, 2011, DHS sent a Notice of Disqualification Hearing to Respondent, notifying him of the June 29, 2011 Administrative Hearing.
7. On June 6, 2011, Respondent's copy of the Notice of Disqualification was returned by the U.S. Post Office to the Michigan Administrative Hearing System, labeled, "Unable to forward."
8. The FAP recoupment amount requested by DHS is \$822, which is the amount Respondent received from September 1-December 31, 2008, a four-month period.
9. DHS requests the penalty for first-time FAP and FIP Intentional Program Violations (IPV) in this case.
10. As the Administrative Law Judge has no jurisdiction to hear FIP IPV cases when the Notice of Disqualification was not served on the Respondent, the FIP IPV request of DHS is DISMISSED.

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 Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and 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 FAP program and, in the event that the Administrative Law Judge makes this decision, DHS asks that Respondent be disqualified from receiving benefits. DHS requests the penalty for a FAP first-time offense in this case, and an Order permitting recoupment of \$822 FAP benefits unlawfully received.

The applicable manual section in this case is BAM 720, "Intentional Program Violation." BAM 720 sets forth the definition of IPV 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 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 (boldface in original).

In this case I must apply BAM 720 to the facts to determine if all three of the elements of 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 element did not occur, I must find that the first element has not been met. Furthermore, BAM 720 requires that all three elements be met. So if the first, 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.

I have reviewed the entire record in this case as a whole. I find and conclude that DHS failed to submit Respondent's FAP application in evidence, so there is nothing in the record to show what Respondent stated to DHS when he applied in 2006. Without this document or another document of similar significance I cannot determine that Respondent failed to report information, or that he reported inaccurate or incomplete information, much less that he did so intentionally for the purpose of establishing, maintaining, increasing, or preventing the reduction of program benefits or eligibility.

Also, I cannot determine without more documentation whether DHS clearly and correctly instructed Respondent regarding his responsibility to report changes to DHS. Thus it is impossible to know with any degree of certainty whether Respondent had such a duty vis-à-vis DHS.

In this case the Department submitted Respondent's November 7, 2008 application for Child Development and Care (CDC) benefits, but as the CDC program has a different application form than the FAP program, I cannot make any inferences from this document as to what Respondent may have signed in 2006 when DHS approved him for FAP benefits. Stated in another way, I find that the CDC application is not relevant to the issues presented in this case.

2010-48305/JL

As DHS failed to establish the first IPV element, and all three elements must be established, DHS cannot prove by clear and convincing evidence that an IPV of the FAP program occurred in this case.

In conclusion, based on the findings of fact and conclusions of law above, I find and decide that all three of the elements of IPV have not been established by clear and convincing evidence, and an IPV of the FAP program has not occurred in this case. DHS' request for an Administrative Hearing decision of IPV of the FAP program is DENIED. DHS may not impose a penalty upon Respondent.


Also, DHS' request for an Order permitting recoupment is DENIED, as DHS has failed to establish that there was an overissuance to Respondent.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, DENIES DHS' request for a finding of IPV of FAP, and DENIES imposition of a first-time penalty for that offense.

IT IS FURTHER ORDERED that DHS' request for an Order permitting recoupment is DENIED, as DHS failed to show that an overissuance occurred in this case.

With Regard to DHS' allegation of IPV of the FIP program, as Respondent's Notice of Disqualification hearing was returned by the U.S. Post Office as undeliverable, this request is DENIED for lack of jurisdiction. Michigan Administrative Code Rule 400.3130(5).



Jan Leventer
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 30, 2011

Date Mailed: June 30, 2011

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 lives.

JL/cl

cc:

