

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2010-4987
Issue No: 2026; 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 17, 2009
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on December 17, 2009. The claimant personally appeared and provided testimony.

ISSUES

1. Did the department properly determine the claimant had excess income for Food Assistance Program (FAP) benefits in September, 2009?
2. Did the department properly determine the claimant should be on a Medical Assistance (MA) deductible program in September, 2009?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The claimant was found to have committed an Intentional Program Violation (IPV) by an Administrative Law Judge in a hearing conducted on May 20, 2009. (Department Exhibit 27 – 37)

2. On August 1, 2009, the claimant was mailed an Intentional Program Violation Client Notice (DHS-4357) that indicated the claimant would be disqualified from receiving FAP benefits from September 1, 2009 through August 31, 2010 due to the IPV. (Department Exhibit 1 – 2)

3. On September 16, 2009, the claimant was mailed a Notice of Case Action (DHS-1605) that informed the claimant her daughter, [REDACTED] was placed on a MA deductible case and that the group's FAP benefits were being closed due to the claimant's IPV finding, which caused excess income to the program group. (Department Exhibit 4 – 8, 23 - 24)

4. On October 1, 2009, the claimant was mailed a Notice of Case Action (DHS-1605) that informed her that she was approved for a MA deductible case with a \$375 monthly deductible and that her son was approved for MA assistance. (Department Exhibit 11 – 15, 22)

5. The claimant submitted a hearing request on MA and FAP on October 14, 2009.

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).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative

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

Department policy states:

The federal Food Stamp regulations read in part:

(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).

IPV

FIP, SDA AND FAP

IPV exists when the client/AR is determined to have committed an Intentional Program Violation by:

- . A court decision.
 - . An administrative hearing decision.
- The client signing a DHS-826, Request for Waiver of Disqualification or DHS-83, Disqualification Consent Agreement, or other recoupment and disqualification agreement forms. PAM, Item 720, p. 1.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 720, p. 2.

DISQUALIFICATION

FIP, SDA and FAP Only

Disqualify an active **or** inactive recipient who:

- . is found by a court or hearing decision to have committed **IPV, or**
- . has signed a DHS-826 or DHS-830, **or**

- . is convicted of concurrent receipt of assistance by a court, **or**
- . for FAP, is found by SOAHR or a court to have trafficked FAP benefits.

A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. PAM 720, pp. 12-13.

Standard Disqualification Periods

FIP, SDA and FAP Only

The standard disqualification period is used in all instances except when a **court** orders a different period (see **Non-Standard Disqualification Periods**, in this item).

Apply the following disqualification periods to recipients determined to have committed IPV:

- . One year for the first IPV
- . Two years for the second IPV
- . Lifetime for the third IPV

MA GROUP 2 INCOME ELIGIBILITY

Deductible

Deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred.

Active Deductible

Open an MA case **without ongoing Group 2 MA coverage** on CIMS as long as:

- . The fiscal group has excess income, **and**
- . At least one fiscal group member meets all other Group 2 MA eligibility factors.

Such cases are called active deductible cases. Periods of MA coverage are added on CIMS each time the group meets it deductible.

Deductible Period

Each calendar month is a separate spend-down period.

Deductible Amount

The fiscal group's monthly excess income is called a deductible amount. PEM 545, pp. 8-9.

Meeting a Deductible

Meeting a deductible means reporting and verifying allowable medical expenses (defined in "EXHIBIT I") that equal or exceed the deductible amount for the calendar month tested. PEM, Item 545, p. 9.

The group must report expenses by the last day of the third month following the month for which it wants MA coverage. PAM 130 explains verification and timeliness standards. PEM, Item 545, p. 9.

In this case, the claimant submitted a hearing request on October 14, 2009. However, once the claimant was participating in the hearing process, she repeatedly indicated she wanted a hearing on an issue that occurred back in March, 2009 when her son was removed from FAP and MA benefits. The claimant also attempted to re-litigate the IPV finding from May 20, 2009. This Administrative Law Judge does not have any jurisdiction to hear either of these issues. A hearing request was not submitted on the March, 2009 issue within the 90 days allowed.

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code (MAC) R 400.901-.951. Any hearing request which protests a denial, reduction, or termination of benefits must be filed within 90 days of the mailing of the negative action notice. MAC R 400.902; MAC R 400.903; MAC R 400.904. In this case, it has been approximately seven months since the time of the alleged negative action. Therefore, this Administrative Law Judge is barred from entertaining this issue.

The claimant also attempted to re-litigate the finding of her IPV from the hearing in May, 2009. The claimant was provided notice in the hearing decision on how to appeal the IPV finding. The claimant does not have the right to attempt to re-litigate the IPV finding with another Administrative Law Judge five months after the finding.

The claimant was repeatedly told by this Administrative Law Judge that she could not bring up these issues in the hearing. The claimant became very disruptive and argumentative and eventually abandoned the hearing by getting up and walking out.

The department is required to disqualify a group member upon an administrative hearing finding of an IPV. PAM 720. The department did disqualify the claimant as a group member. This caused the FAP group to have excess income for FAP eligibility. Thus, the FAP benefits were closed.

The claimant has been on a MA deductible program due to excess income for quite some time—the department testified since at least since February, 2009. The department has properly had the claimant on a deductible case because the claimant has excess income for regular MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that:

1. The department properly disqualified the claimant from the FAP program group and closed the claimant's case due to excess income in September, 2009.

2. The department properly determined the claimant should be on a Medical Assistance (MA) deductible program in September, 2009.

Accordingly, the department's actions are UPHeld. SO ORDERED.

/s/
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 24, 2010

Date Mailed: March 2, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

SLK 

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