

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Respondents

Reg. No.: 2010-8068

2010-8069

Issue No.: 3052

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

January 13, 2010

Wayne County DHS (59)

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan, on January 13, 2010. The Respondent, [REDACTED], was present and testified. [REDACTED] representative, appeared on behalf of the Department.

ISSUE

Whether Respondents committed an Intentional Program Violation (IPV) and whether Respondents received an over-issuance of benefits that the Department is entitled to recoup?

FINDINGS OF FACT

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

1. The Department's Office of Inspector General (OIG) filed a hearing request to establish an over-issuance of benefits received by Respondents as a result of

Respondents having committed an IPV. The OIG also requested that Respondents be disqualified from receiving program benefits.

2. Respondents are husband and wife who are currently separated, but not legally divorced.
3. Respondents were recipients of FAP benefits during the period of 10/2000 through 10/31/03.
4. Respondents were aware of the responsibility to report all income in the household to the department.
5. Respondent [REDACTED] testified that he was suffering from bipolar disorder and was on mind altering medication at the time of alleged over-issuance.
6. Respondent [REDACTED] began working in 4/30/02 and did not report her income in a timely manner on the DHS 1171 of 2/27/03 and 9/16/03. (Exhibit 1, pp. 29, 36.
7. As a result, Respondents received over-issuances calculated by the Department in the amount of \$8,239.00 under the FAP program.
8. The Department has not established that Respondents committed an IPV.
9. A notice of disqualification hearing was mailed to each of the Respondents' last known address and neither was returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

A. IPV

The Family Independence Program ("FIP") was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services administers the FIP program pursuant to MCL

400.10, *et seq* and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (“ADC”) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

The Food Assistance Program, 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”), formerly known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). PAM 700, p. 1. DHS must inform clients of their reporting responsibilities and prevent OIs by following PAM 105 requirements informing the client of the requirement to promptly notify DHS of all changes in circumstances within 10 days. PAM 700, PAM 105. Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.

An Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client 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. 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).

For FIP and FAP, the IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines there was an Intentional Program Violation. PAM 720, p. 1. The amount of the OI is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. PAM 720, p. 6.

In the present case, the Department did not present clear and convincing evidence that the Respondent [REDACTED] failure to report her income was intentional for the purposes of affecting her FAP benefits. Accordingly, the Administrative Law Judge does not find that there was an IPV.

Furthermore, Respondent [REDACTED], gave credible testimony that he was suffering from bipolar disorder and was taking mind altering drugs during the period of over-issuance. In support of his medical condition, Respondent [REDACTED] indicated that he was awarded SSI for a period of two years. The Administrative Law Judge does not find that Respondent [REDACTED] intentionally withheld or misrepresented information in order to obtain benefits.

B. Recoupment

The federal regulations define household income to include all earned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. PEM 550. Under 7 CFR 273.9, as amended, \$125.00 is deducted from the gross income of FAP recipients in determining FAP grants. Unearned income includes FIP benefits, SSI payments for family members (PEM 500, p. 33) and child support (PEM 500, p. 10). Under 7 CFR 273.9 deductions for excess shelter are also made. PEM 554. Id. There is a standard heat and utility deduction as well as a standard

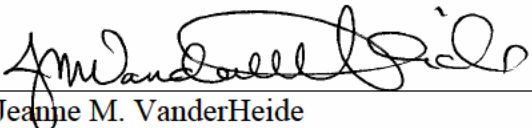
deduction for telephone bills. Id. The standard deductions are a set amount that is applied regardless of the actual expenses incurred by the claimant.

In the present case, the Department is attempting to collect for an over-issuance of FAP benefits. In the FAP budgets, however, the Department did not reduce the Respondent's reported earned income by 80%. After recalculating the budgets with reduced earned income, however, this Administrative Law Judge finds that the Respondents were still over the FAP income limit on all budgeted months. Accordingly, based upon the foregoing facts and relevant law, it is found that the Department can recoup \$8,239.00 from the Respondents jointly and severally for over-payment of FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Respondents did not commit an IPV with regard to the FAP program although the group received over-issuances in program benefits.

It is further ORDERED that the Department recoup for over-issuances in FAP benefits from the Respondents jointly and severally in the amount of \$8,239.00.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 2, 2010

Date Mailed: February 3, 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.

JV/pf

cc:

