

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Respondent

Reg. No.: 2010-8614
Issue No.: 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 19, 2010
Wayne County DHS (57)

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 conducted from Detroit, Michigan, on May 19, 2010. Respondent did not appear. [REDACTED]

[REDACTED], appeared and testified on behalf of DHS.

ISSUE

Did Respondent commit 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. Respondent was a FAP recipient from January 1, 2002, through December 31, 2003, a period of two years.

2. Respondent was working and received earned income during the time she was receiving FAP benefits. She earned \$26, 014.40 in 2002 and \$27, 020.16 in 2003.
3. Respondent failed to report her earned income to DHS in a timely manner.
4. Due to Respondent's failure to report her earned income, she received a \$12,836 FAP overissuance from January, 2002-December, 2003.
5. Respondent's husband, [REDACTED], completed an application for FAP for his entire family group without acknowledging his wife's income or any changes in her income.
6. On October 12, 2009, DHS requested repayment of \$12,836 from Respondent. Respondent failed to sign the DHS Repayment Agreement.
7. DHS presented no evidence to establish a prior Intentional Program Violation; therefore, this is Respondent's first Intentional Program Violation.

CONCLUSIONS OF LAW

FAP was established by the Food Stamp Act of 1977 and is implemented by Federal regulations found in Title 7 of the Code of Federal Regulations (CFR). DHS administers FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-3015. DHS' FAP policies and procedures are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT), which are online at www.mich.gov.

In this case, DHS has requested a finding of an Intentional Program Violation and, in the event that the Administrative Law Judge makes that finding, DHS asks that Respondent be disqualified from receiving benefits. DHS requests the Administrative Law Judge to order the penalty for a second offense in this case.

The applicable manual section in this case is BAM 720, "Intentional Program Violation," which was updated on May 1, 2010, and is seventeen pages long. The definition of an IPV is set forth on page 1:

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.

I conclude that there is clear and convincing evidence to establish that Respondent committed an FAP Intentional Program Violation. Although Respondent was aware of her reporting responsibilities, she intentionally failed to report her earned income to DHS. This information was necessary in order to determine her eligibility for program benefits. There is no evidence in the record of any justifiable excuse for Respondent's failure to report her income.


I further find that, other than its conclusory statement that Respondent was placed in a Diversion Program for a similar offense in 1996, DHS has failed to prove that this is Respondent's second Intentional Program Violation. There is no court order, administrative hearing order, or repayment agreement in the record documenting an Intentional Program Violation, as required by BAM 720, p. 12. I therefore conclude that this is Respondent's first IPV, and I decline to apply the penalty for a second-time IPV.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Respondent committed her first FAP Intentional Program Violation. Accordingly, the Administrative Law Judge ORDERS that:

1. Respondent is personally ineligible to participate in FAP for twelve months. This disqualification period shall be applied immediately.

2. Respondent shall be required to reimburse DHS for FAP benefits which she received in violation of the income reporting requirements of DHS policies and procedures, in the amount of \$12,836.



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

Date Signed: May 25, 2010

Date Mailed: May 25, 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:

