

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.: 2010-8618
Issue Nos.: 1052, 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. The Notice of Disqualification Hearing sent to Respondent was returned as undeliverable to the State Office of Administrative Hearings and Rules (SOAHR) on April 26, 2010.

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

[REDACTED], appeared and testified for DHS.

ISSUES

1. Is there clear and convincing evidence to show that Respondent intentionally failed to report earned income?

2. Does SOAHR have jurisdiction to conduct a Disqualification Hearing in a Family Independence Program (FIP) matter, when Respondent was not notified of the hearing?

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 October 3, 2006, Respondent completed an application for FIP, FAP and Medical Assistance benefits, stating she was unemployed.
2. On October 23, 2006, Respondent became employed as a Customer Service Representative with [REDACTED].
3. Respondent did not report her employment to DHS.
4. Respondent's last day worked was March 15, 2007.
5. DHS alleges that, from December, 2006, through March, 2007, a period of four months, Respondent committed an Intentional Program Violation (IPV) in that she failed to report earned income.
6. DHS alleges Respondent received \$1,136 FAP and \$1,604 FIP benefits unlawfully.
7. On October 8, 2009, DHS sent Respondent an Intentional Program Violation Repayment Agreement and a Disqualification Consent Agreement, DHS Forms 4350 and 830. Respondent did not sign the documents.
8. On April 12, 2010, DHS issued a Notice of Disqualification Hearing/ Request for Waiver of Disqualification Hearing, Form DHS-827, and sent it to Respondent with accompanying documentation.

9. On April 26, 2010, the U.S. Postal Service returned the materials to SOAHR marked “No such number, Unable to forward, Return to sender.”
10. This is the first allegation of IPV against Respondent.

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 (MACR) 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/dhs-manuals.

FIP was established by the 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 MACR 400.3101-3131. DHS’ FIP policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). www.mich.gov/dhs-manuals.

DHS requests a finding of FAP and FIP Intentional Program Violations and, in the event that the Administrative Law Judge makes a finding, DHS asks that the Respondent be disqualified from receiving benefits for a first-time IPV offense.

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. IPV is defined 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. (Emphasis added.).

I have examined all of the documents and testimony presented in this case. In this case DHS is not alleging that Respondent's October 3, 2006, application was intentionally incomplete or inaccurate, but that, when she began working on October 23, 2006, she intentionally violated program requirements by failing to report her income.

Based on all of the evidence in this case taken as a whole, I decline to find that Respondent intentionally failed to report earned income. There is nothing in the record to indicate that Respondent was clearly and correctly instructed regarding reporting responsibilities. I find no language in the application form advising Respondent of her reporting responsibilities. DHS' Evidence List states that a Redetermination Booklet will be submitted in evidence, but it was not presented at the hearing. While it is possible that such a booklet might establish that Respondent was clearly and correctly instructed about her reporting responsibilities, I cannot make that determination in the absence of the booklet itself.

I conclude that there is no clear and convincing evidence in the record to establish that Respondent committed an FAP IPV. I determine that there is insufficient evidence to prove that Respondent was clearly and correctly informed of her reporting responsibilities. Without such evidence I conclude that DHS has failed to establish an IPV.

Next, with regard to the charge of IPV of the FIP program, as the Notice of Disqualification Hearing was returned as undeliverable, I have no jurisdiction to conduct a hearing on this issue. MACR 400.3130(5) states that a disqualification hearing in the absence of

notice to Respondent is not authorized. MACR 400.3130(5). Accordingly, this issue must be DISMISSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that DHS has failed to establish by clear and convincing evidence that a FAP IPV occurred. DHS' allegation is DISMISSED.

Second, with regard to DHS' allegation of a FIP IPV, because there was no notice to Respondent, I have no jurisdiction over this issue, and it also is DISMISSED.



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

Date Signed: June 1, 2010

Date Mailed: June 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.

JL/pf

cc:

