

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201011125
Issue No.: 3055/3052/1052
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 21, 2010
Marquette County DHS (52)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on July 21, 2010. The Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5). [REDACTED], OIG representative appeared on behalf of the Department.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether the respondent 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 as material fact:

1. The Department's Office of Inspector General (OIG) filed a hearing request to establish an over issuance of benefits received by respondent as a result of respondent having committed an IPV. The OIG also requested that respondent be disqualified from receiving program benefits.
2. Respondent was a recipient of FIP and FAP benefits during the period of July 1, 2005 through July 31, 2005 and February 1, 2005 through July 31, 2005 respectively.
3. On May 18, 2005 the Claimant applied for FIP and FAP benefits due to the birth of her child and loss of income due to maternity leave. The

Claimant did not report that she had returned from a leave in November and had been working.

4. Respondent was aware of the responsibility report a change in income and accurately reporting all income and any changes in the composition of her FAP group and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. Respondent did not report her return to employment in February 2005 from a leave for maternity reasons in November 5, 2004 and also did not report her return to work in June 2005 when she returned to work from maternity leave and was otherwise receiving income. Item 7 Page 36.
6. The Claimant did not report the father of her child as a group member living in her residence during the period beginning May 1, 2005 after the birth of her child through November 30, 2005.
7. The Claimant was eligible for and began receiving FIP benefits effective June 1, 2005 and received an over issuance of benefits of one month in July 2005 in the amount of \$356. Page 44
8. After the birth of her baby on [REDACTED] the Claimant did not report the father of her child, [REDACTED] as a mandatory member of her FAP group as he acknowledged paternity on May 3, 2005. Dorian Bailey listed the Claimant's address as his address with his employer and on the acknowledgment of paternity. Items 4 page 21 and 22
9. As a result of the failure to report her earnings and return to work, the Claimant received an over issuance of FIP benefits in the amount of \$356 and FAP benefits in the amount of \$721.
10. Respondent received more FAP and FIP benefits than she was otherwise entitled during the period 2/1/2005 through 7/1/2005 and did not report her income. As a result of the failure to report the FAP group income and her return to work respondent committed an IPV and received an over issuance of benefits. Item 7 pages 32 through 38.
11. As a result of the failure of the Claimant to report the father of Claimant's child residing with the group the claimant received an over issuance of FAP benefits in the amount of \$275 in July 2005. Item 6
12. As a result, respondent received over issuances in the total amount of \$721 under the FS/FAP program, and \$356 in FIP benefits for July 2005.

13. The Department has established that respondent committed an IPV with regard to the Claimant's receipt of FAP benefits.
14. This was respondent's first Intentional Program Violation for the FAP program and FIP programs.
15. As the Claimant only received one month of FIP benefits and it is not otherwise established that her receipt of benefits for July 2005 was otherwise intentional the Department did not establish an intentional program violation but did establish an over issuance.
16. A notice of disqualification hearing was mailed to respondent at the last known address.
17. The notice was not returned as undeliverable.

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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to CML 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 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 eligible group must be in financial need to receive benefits. Need is determined to exist when budgetable income is less than the payment standard established by the department. Program, living arrangement, grantee status and eligible group size are variables that affect the payment standard. PEM 515, p. 1.

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 FAP, the IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 720, p. 2. 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 has established that respondent was aware of the responsibility to report change in household income and correctly report household income and received more FAP benefits than she was otherwise entitled to receive, and had no apparent limitations to fulfilling this requirement. The respondent failed to report her return to work over a period of months beginning in February 2005 and again in June 2005 and did not report her return on the form 1171 which she filled out on May 19, 2005 after requesting benefits after the birth of her child. The Claimant thus under reported her income which resulted in an over issuance of FAP benefits in the amount of \$721. As a result, respondent committed an IPV and was over issued FS/FAP. Additionally the Claimant received FIP benefits during the period July 1, 2005 through July 31, 2005 when she had returned to work and was also ineligible for benefits. The Department did not establish an Intentional Program Violation with regard to the issuance of FIP benefits. Under the aforementioned policy, respondent is to be disqualified from the FAP/FS program for a period of one (1) year. BAM 720 page 12.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent committed an IPV with regard to the FAP program and did not establish an IPV for the FIP program but did receive over issuances of benefits in the FAP and FIP programs.

It is ORDERED that respondent be disqualified from the FAP program for a period of 1 year.

It is further ORDERED that the Department recoup for over issuances in FAP benefits in the amount of \$721.

It is ORDERED that the respondent is not disqualified from the FIP program for a period of one year as the Department did not establish an Intentional Program Violation and therefore the Department's request for an IPV is DENIED.

It is further ORDERED that the Department recoup for over issuances in FIP benefits in the amount of \$356.



Lynn M. Ferris
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/02/2010

Date Mailed: 08/02/2010

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.

LMF/jlg

cc:

