

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.: 2010-11280
Issue Nos.: 1052, 3055
Case No.: [REDACTED]
Hearing Date: December 15, 2010
DHS County: Wayne (82-15)

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 held on December 15, 2010. Respondent [REDACTED] did not appear. [REDACTED], appeared and testified on behalf of DHS.

ISSUE

Whether Respondent committed Intentional Program Violations (IPVs) of the Food Assistance Program (FAP) and the Family Independence Program (FIP)?

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 September 5, 2001, Respondent signed an application for FAP and FIP benefits. Her signature appears immediately under this printed statement:

IMPORTANT: YOU MUST SIGN THE APPLICATION

I certify that I have received and reviewed a copy of the Acknowledgments, that explains additional information about applying for and receiving assistance benefits. (Bold print in original.)

2. DHS awarded FAP and FIP benefits to Respondent.

3. From September 19, 2001-January 4, 2002, [REDACTED] paid short-term disability benefits to Respondent.
4. Respondent failed to report her disability income to DHS.
5. On October 1, 2009, DHS sent Respondent an IPV Repayment Agreement and requested her signature. Respondent failed to sign the Repayment Agreement.
6. On November 15, 2010, DHS sent a hearing notice to Respondent notifying her of the December 15, 2010, hearing date.

CONCLUSIONS OF LAW

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations found in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules (MACR) 400.3001-400.3015. DHS' FAP policies and procedures are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

FIP was established by the U.S. 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 400.3101-400.3131. DHS' FIP policies are found in BAM, BEM and RFT. *Id.*

In this case, DHS requests findings of IPV of the FAP and FIP programs and, in the event that the Administrative Law Judge decides that IPV's occurred, DHS asks that Respondent be disqualified from receiving benefits. DHS requests the penalties for FAP and FIP first-time offenses against Respondent.

The applicable manual section in this case is Program Administrative Manual (PAM) 720, "Intentional Program Violation," which was adopted on August 1, 2001, and was in effect on September 5, 2001, the date Respondent signed the application. PAM 720 is an earlier version of BAM 720, "Intentional Program Violation," which is available online. *Id.*

The definition of IPV is similar in both earlier and current versions of the manual. However, the 2001 PAM 720 Item is not available online. I quote PAM 720 here for reference.

PAM 720 sets forth the definition of IPV in effect on September 5, 2001, on page 1:

INTENTIONAL PROGRAM VIOLATION

DEFINITIONS

All Programs

Suspected IPV

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.

Intentional Program Violation (IPV) is suspected when the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. There must be clear and convincing evidence that the client acted intentionally for this purpose. PAM 720, p. 1 (bold print and underlining in original).

In this case, I must apply PAM 720 to the facts to determine if all three elements of the IPV have been met. I begin with the first element, which requires that the client must have intentionally failed to report information or intentionally given incomplete or inaccurate information needed to make a correct benefit determination. If I determine that any piece of the first requirement did not occur, I must find that the first element has not been met.

Furthermore, PAM 720 requires that all three requirements be met. So, if the first element, or any other element, is not met, then I must find that DHS has failed to prove IPV by clear and convincing evidence. If this is my finding, then, that DHS' request for an administrative hearing decision of two IPV's must be denied.

With regard to the first element, I find that I must determine only whether Respondent failed to report information, as there is no allegation that she reported incomplete or inaccurate information when she applied. In order to determine whether Claimant failed to report information intentionally, I must move to the second element, knowledge of

responsibility, because if Respondent had no knowledge of her responsibility to report income, she cannot be found intentionally to have failed to do so.

I have examined all of the evidence and testimony in this case as a whole. I find that Respondent was awarded benefits in 2001 and was fully knowledgeable about her reporting responsibilities. Respondent received the Acknowledgments materials at the time she signed the DHS application, and this is established by her signature on the application. I find this is clear and convincing evidence that she was informed about her responsibility to report income within ten days.

Returning back to the first element, as I have found that Respondent knew her responsibility, I now find and conclude that she failed to report income to DHS in violation of her responsibility to report it within ten days. I find that Respondent, by her intentional failure to report income, committed two IPVs.

In this case, I find that DHS presented clear and convincing evidence to establish that the first two elements of the IPV are met. I now turn to the third element, mental or physical impairment, to see if DHS has established this element as well.

Again, having reviewed all of the testimony and evidence in this case as a whole, I find nothing in the record to indicate that Respondent has a mental or physical impairment that limited her understanding or ability to fulfill her reporting responsibilities. Therefore, I find and conclude that the third IPV element has been satisfied by DHS by clear and convincing evidence.

In conclusion, as all three of the elements of the IPV have been established by clear and convincing evidence, I find and decide that an IPV of the FAP program has occurred. DHS' requests for administrative hearing decisions of IPV of FAP and FIP are GRANTED.

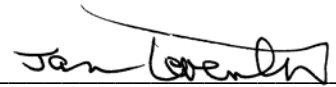
I next turn to the penalties DHS requested in this case, which are the first-time penalties for the two IPVs. I find that the record does establish that first-time penalties are appropriate, as there are no allegations that Respondent committed previous IPVs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, GRANTS DHS' request for findings of IPVs of FAP and FIP. IT IS ORDERED that the penalties for the FAP and FIP IPVs shall be the penalties for first-time offenses.

IT IS FURTHER ORDERED that DHS is entitled to recoup the FAP and FIP overissuances to Respondent of \$545 and \$1,816 respectively. DHS shall proceed in accordance with all policies and procedures.

IT IS SO ORDERED.



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

Date Signed: December 21, 2010

Date Mailed: December 22, 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:

