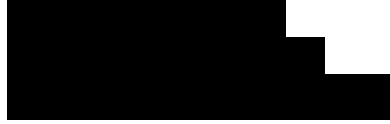


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No: 2010-23176
Issue No: 3052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 30, 2010
Genesee County DHS

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 June 30, 2010. The Respondent appeared and testified. Kristin Kerr, 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 FAP benefits since 7/20/06.
3. Respondent was aware of the responsibility to report all employment and income to the Department and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

4. The Department asserts that Respondent did not report her household income in a timely manner after her return to work from maternity leave.
5. Respondent testified that she forwarded a wage verification to her employer as soon as she received it in the mail.
6. As a result of the failure to report all household income, Defendant argues that respondent committed an IPV and received an over issuance of benefits in the amount of \$1,549.00 under the FS/FAP program.
7. The Department has not established that Respondent committed an IPV.
8. The Department has established the amount of over issuance incurred by Respondent.
9. A notice of disqualification hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.
10. This was Respondent's first Intentional Program Violation.

CONCLUSIONS OF LAW

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"), formally 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 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 all employment and income for persons living in the household and had no apparent limitations to fulfilling this requirement. Respondent applied for FAP benefits when she was already on maternity leave. Respondent returned to work on [REDACTED]. The Department forwarded a new employment verification to Respondent on December 12, 2006. Respondent immediately forwarded it to her employer and it was submitted on 1/10/07. The Department has not provided any evidence that Respondent's failure to report was intentional and intended to extend benefits other than the fact that she failed to do it timely. Furthermore, the evidence shows that as soon as Respondent was made aware of the need for updated information, she forwarded the wage verification to her employer. As the evidence must be clear and convincing regarding Respondent's intent, the undersigned finds that the Respondent did not commit an IPV.

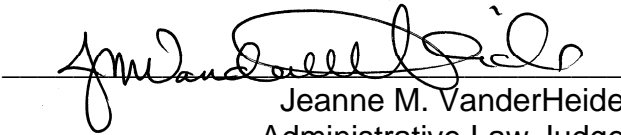
The federal regulations define household income to include all earned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. PEM 550. Under 7 CFR 273.9, as amended, \$128.00 is deducted from the gross income of FAP recipients in determining FAP grants for a group size of 3 in 2003. Unearned income includes FIP benefits, disability payments (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.

The undersigned has personally checked the FAP budgets provided by the Department in the calculation of over-issuance of benefits and finds that they are accurate. Accordingly, based on the above findings of fact and conclusions of law, the Administrative Law Judge finds that Respondent did not commit an IPV, but that there was an over issuance of FAP benefits in the amount of \$1,549.00 that the Department is entitled to recoup.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Respondent did not commit an IPV with regard to the FAP program. Therefore, the Department's request for an IPV and disqualification is DENIED.

However, the Department has established, conclusively, the amount that Respondent received in overissuance of FAP benefits. It is ORDERED that the Department is entitled to recoup \$1,549.00 for the over-issuance of FAP benefits Respondent ineligibly received.


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

Date Signed: 07/15/10

Date Mailed: 07/20/10

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/dj

cc:

