

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 23192

Issue No: 3055, 3052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 5, 2010

Wayne County DHS

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 Department's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on May 5, 2010. The Respondent did not appear and testify. Norman McKenzie, 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 a 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. Exhibit 1
2. Respondent was a recipient of FAP benefits since 2005.
 3. This was the Claimant's first Intentional Program Violation.
 4. A notice of disqualification hearing was mailed to Claimant at the last known address and was returned by the US Post Office undeliverable. Exhibit 1
 5. Respondent was aware of the responsibility to report all income in the household to the Department.
 6. On August 18, 2005, the claimant submitted, as part of a FAP review, an application which indicated that she was working and received child support for two children. Exhibit 2, pages 10 – 16.
 7. Respondent reported her child support and income to her caseworker. The claimant did not list the income of another adult in the household on the application, but the caseworker notes indicate that the claimant advised the department that that individual had recently lost their job and was starting another one. Exhibit 3 Page 17
 8. An IPV investigation was initiated.
 9. As a result, respondent received over-issuances in the amount of \$1105.00 under the FAP program. Exhibit 4, page 9
 10. The period of alleged fraud was June 1, 2005 through December 31, 2005.
 11. The Department has not established that respondent committed an IPV.
 12. The Department submitted FAP budgets demonstrating the amount of the FAP over-issuance for the three month period June through August 2005.

13. The Department did not submit FAP budgets for the remaining months it sought to recoup the over-issuance.
14. The Department is entitled to an over-issuance for the months of June, July and August 2009 in the amount of \$101.00, \$101.00 and \$252 for a total of \$454.00. Exhibits 5, 6 and 7 respectively Pages 39, 40 and page 32.

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”).

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”).

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.

BAM 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. BAM 720, p. 6.

In the present case, the Department has established that respondent was aware of the responsibility to report all income in the household and had no apparent limitations to fulfilling this requirement. The respondent had previously reported her income throughout the time she received benefits. The Department did not establish that she intentionally failed to report child support and income of the other group member to her caseworker for the reason it is unclear when that person moved into the group. As a result, the respondent did not commit an IPV, although, she was over-issued FAP benefits.

The amount of the over-issuance contained in the Decision and Order and Findings of Fact was based on the documentary evidence submitted. As budgets were not submitted for August through December, no over-issuance was proved and established by the Department.

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 FIP or FAP program, although, she received over-issuances in program benefits.

It is ORDERED that the Department recoup for over-issuances in FAP benefits in the amount of \$454.00.

The request for a sanction for an intentional program violation is DENIED.



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

Date Signed: 06/11/10

Date Mailed: 06/11/10

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.

LMF/dj

cc:

