

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: 201026151

Issue No: 3055

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 21, 2010

Marquette County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request for a disqualification hearing. After due notice, a telephone hearing was held on April 21, 2010. 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).

ISSUE

Did the respondent commit an Intentional Program Violation (IPV) and did the respondent receive an over-issuance of benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

- 1) Respondent was a recipient of FAP benefits during the period of December 1, 2003 through March 31, 2005.

- 2) On January 15, 2004, respondent stopped listing her husband in the home.
- 3) Sometime in 2005, an anonymous caller told the Department that the respondent's husband was still in the home.
- 4) In a November 2005 statement, respondent's husband told the Gogebic County Friend of the Court that he had always lived with the respondent and that respondent had intentionally misled the agency in order to secure more benefits.
- 5) On March 15, 2005, the Gogebic County Sheriff's Department was called to investigate a complaint of a domestic disturbance.
- 6) Allegations in the complaint varied wildly between the two parties, respondent and her husband.
- 7) In this complaint, respondent alleged domestic abuse.
- 8) At the hearing, respondent testified that her husband had not been in the home during the time period in question.
- 9) Respondent testified that her husband had made the statements in question in order to hurt the respondent with regard to her benefit case.
- 10) Respondent's husband's employer listed the husband as living at the respondent's address.
- 11) Respondent's utility bills were made out to both the respondent and her husband.
- 12) Respondent received FAP benefits during this time.

- 13) On January 13, 2010, 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 Intentional Program Violation (IPV); the OIG also requested that respondent be disqualified from receiving program benefits.
- 14) A Notice of Disqualification Hearing was mailed to respondent at the last known address and was not returned by the U.S. Post Office as undeliverable. Respondent's last known address is: [REDACTED], [REDACTED].
- 15) OIG Agent [REDACTED] represented the Department at the hearing; respondent appeared and represented herself pro se.
- 16) This is respondent's first alleged IPV.

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 (DHS or Department) administers the FAP program pursuant to MCL 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).

In this case, the Department has requested a disqualification hearing to establish an over-issuance of benefits as a result of an IPV and the Department has asked that

respondent be disqualified from receiving benefits. The Department's manuals provide the following relevant policy statements and instructions for Department caseworkers:

Suspected IPV means an OI 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 there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM, Item 720, p. 1.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
 - (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).
 - (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).

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent **intentionally** made a false or misleading statement, or withheld information, **for the purpose of committing an IPV**, with regard to the FAP program.

In this case, the Department has established that respondent was aware of the responsibility to report all income and employment to the Department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. However, the undersigned is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that the respondent intended to defraud the Department with regard to her FAP eligibility.

The burden of proof that the Department must meet in order to prove Intentional Program Violation is very high. It is not enough to prove that the respondent was aware of the requirements to report at some point, nor is it enough to prove that the respondent did not report in a timely manner. The Department must prove in a clear and convincing manner, that, not only did the respondent withhold critical information, but that the respondent withheld this information with the intent to defraud the Department. In other words, the Department must prove that the respondent did not simply forget to meet their obligations to report, but rather, actively sought to defraud the Department.

The undersigned does not believe that standard has been met, due to the unusual circumstances of the case.

The Administrative Law Judge notes that the respondent's husband's statement to the Gogebic County FOC cannot be considered. This statement is a prime example of hearsay.

While the undersigned is not strictly required to follow the rules of evidence in every circumstance, a statement provided to the friend of the court, which was then given to DHS, and then to the investigating agent, which is being used to prove the truth of the matter (whether or not the husband was in the home), is hearsay of the highest order. Such statements should only be given in an instance where the respondent can cross-examine the witness, and the fact-finder can have a chance to determine its veracity. This set of circumstances does not exist in this case, and therefore, the undersigned will not permit the statement into the evidence record.

Therefore, the evidence against the respondent consists of the fact that her husband had listed the respondent's address as his home address with his employer, and the fact that some utilities were in the names of both the respondent and her husband.

Respondent testified at hearing that she had been the victim of domestic abuse for a period of time which culminated in December 2003 when she had her husband removed from the home. Respondent's testimony was supported by direct witness testimony. Respondent also submitted a police statement from March 2005, which, according to the respondent, showed the situation in the home when the husband allegedly attempted to return.

The undersigned, after reviewing this statement, does not believe that it is nearly as conclusive as respondent claims. The police report contains two wildly conflicting

reports of the night in question from at least two different witnesses, with no indication as to what actually occurred. It is the opinion of the undersigned that the report in question does not show that the respondent's husband was outside of the home at the time; however, it does not show that respondent's husband was in the home either.

Furthermore, while the respondent's husband's address he had on file with his employer, and the fact that the utility bills were in both person's names are certainly pieces of circumstantial evidence that the respondent's husband was in the home, the undersigned does not believe that they clearly and convincingly show that he was in the home. It is just as likely, as would happen in a domestic violence case, that respondent's husband neglected to change his address with his work location. There is no evidence that the actual paychecks were sent to this address. The same can be said regarding the utility bills; the fact that both names were on the bill could be just as likely a result of the bills never being officially changed over.

While these two pieces of evidence may charitably mean, more likely than not, that respondent's husband was in the home, more likely than not is a standard of evidence far below clear and convincing. The undersigned, when all things have been considered, remains unconvinced that the respondent's husband was definitely in the home. He admits that the possibility exists, but, in the absence of any evidence beyond third-hand hearsay and a couple of addresses, is unable to state that with any clear and convincing evidence.

In any IPV case, the burden of proof rests upon the Department to show, by clear and convincing evidence, that the respondent committed an IPV. The undersigned does not believe that evidence exists. As such, the Administrative Law Judge cannot

hold that the respondent's husband was in the home, and therefore, no IPV was committed. As there is no clear and convincing evidence that respondent lied with regard to her group size, the undersigned holds that respondent received all entitled benefits and was not over-issued. Recoupment must therefore be denied.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that respondent committed an Intentional Program Violation of the FAP program. There is no clear and convincing evidence that respondent received benefits she was not entitled to.

Recoupment is DENIED.



Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/11/2010

Date Mailed: 08/11/2010

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.

RJC/dj

cc:

