

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2010-28969
Issue No: 2018; 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 13, 2010
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on May 13, 2010. The claimant personally appeared and provided testimony, through the use of an interpreter, [REDACTED], her daughter, and with her attorney, [REDACTED].

ISSUE

Did the department properly deny the claimant's Food Assistance Program (FAP) and Medical Assistance (MA) application in February, 2010?

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 claimant applied for FAP and MA benefits on January 11, 2010.
2. The claimant's FAP and MA application was denied on February 12, 2010.
3. The claimant submitted a hearing request on March 10, 2010.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Department policy states:

INTENTIONAL PROGRAM VIOLATION

DEFINITIONS

All Programs

Suspected IPV

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. BAM, 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).

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).

IPV

FIP, SDA AND FAP

IPV exists when the client/AR is determined to have committed an Intentional Program Violation by:

- . A court decision.
- . An administrative hearing decision.
- . The client signing a DHS-826, Request for Waiver of Disqualification or DHS-83, Disqualification Consent

Agreement, or other recoupment and disqualification agreement forms. PAM, Item 720, p. 1.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. PAM 720, p. 2.

DISQUALIFICATION

FIP, SDA and FAP Only

Disqualify an active **or** inactive recipient who:

- . is found by a court or hearing decision to have committed **IPV, or**
- . has signed a DHS-826 or DHS-830, **or**
- . is convicted of concurrent receipt of assistance by a court, **or**
- . for FAP, is found by SOAHR or a court to have trafficked FAP benefits.

A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. PAM 720, pp. 12-13.

In this case, the department worker testified that she denied the claimant's FAP and MA application due to a sanction placed on the client by the county's Program Manager. This apparently came about due to some newspaper article in the *Ann Arbor News*. However, when this Administrative Law Judge asked the county worker for documentation showing the basis of any sanction against the claimant and her family, the worker only indicated that the Program Manager had ordered the sanction via a May 11, 2009 memo, which the department presented purportedly to establish the sanction.

However, there is absolutely no basis for a sanction contained in the memo. This Administrative Law Judge requested the worker locate the Program Manager to provide

testimony as to the policy basis for her ordered sanction. When the Program Manager arrived and was sworn in, she testified she did not know what the basis for the sanction was, but that the claimant's husband had apparently committed fraud. The Program Manager was asked if a court hearing or administrative hearing was conducted finding this, or, alternatively, if the claimant or a member of her program group had signed a DHS-826 or DHS-830, acknowledging an Intentional Program Violation (IPV). The Program Manager again indicated that she wasn't sure, but she didn't think so.

After the record had been closed, the department attempted to submit additional documentation printed from Bridges that indicates the clients have a first IPV and that disqualification was due to a court order finding FAP trafficking. This was not accepted into evidence, as the claimant and her attorney did not have a chance to review the documents or cross-examine witnesses about it. However, it is not even accurate as the Program Manager subsequently sent information that indicated this was completely inaccurate and the case had never been forwarded to the Office of Inspector General (OIG) for investigation, but that the county was "taking the proper steps at this time to make the referral" to OIG.

Department policy indicates that an IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked. BAM 720. Disqualification occurs when a court or administrative hearing has found a client guilty of an IPV or the client signs a DHS-826 or DHS-830, admitting committing an IPV. There has been no finding by clear and convincing evidence that any fraud and IPV exists. Thus, the department was in clear contravention to policy by sanctioning the claimant on both FAP and MA programs with no due process and no policy basis.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied the claimant's FAP and MA application.

Accordingly, the department's actions are REVERSED. The department shall:

1. Re-process the claimant's February 12, 2010 application in accordance with department policy.
2. Issue the claimant any retroactive benefits that she may be entitled to receive.

SO ORDERED.

/s/
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 17, 2010

Date Mailed: May 20, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

SLK [REDACTED]

cc: [REDACTED]