

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.: 2010-30173
Issue No.: 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: October 6, 2010
DHS County: Saginaw

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) Sections 400.9 and 400.37 and a request for a hearing made by the Office of the Inspector General (OIG) of the Department of Human Services (DHS). After due notice, a telephone hearing was held on October 6, 2010. Respondent appeared and testified. [REDACTED], appeared and testified on behalf of DHS.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?

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 or before October 16, 2007, Respondent's son, [REDACTED], resided at [REDACTED].
2. On October 16, 2007, Respondent's son, [REDACTED], began working at a [REDACTED] store at an unknown location earning \$7.90 per hour.
3. In December 2007, [REDACTED] was not living in [REDACTED] with Respondent.
4. On December 19, 2007, and January 22, 2008, Respondent applied for FAP benefits.

5. Respondent was awarded FAP benefits for a group size of six persons, which did include [REDACTED].
6. On August 31, 2008, Respondent's FAP benefits ended.
7. On January 26, 2010, DHS sent Intentional Program Violation Repayment Agreements and a Notice of Disqualification Hearing/Request for Waiver of Disqualification Hearing, DHS Forms DHS-4350 and DHS-827, to Respondent's address. Respondent failed to sign and return the documents.
8. This is the first IPV allegation against Respondent.

CONCLUSIONS OF LAW

FAP was established by the 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 Section 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-.3015. DHS' current FAP policies and procedures are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT), which are online at www.michigan.gov/dhs-manuals.

DHS alleges that, from December 1, 2007-June 30, 2008, a period of seven months, Respondent committed an IPV in that she intentionally failed to report the earnings of a household member. DHS alleges Respondent unlawfully received FAP benefits of \$1,914. DHS requests a finding of a FAP IPV and, in the event that the Administrative Law Judge makes this finding, DHS asks that Respondent be disqualified from receiving benefits for an IPV first-time offense.

I turn now to the question: is there clear and convincing evidence to prove that Respondent committed an IPV according to law? In this case, the applicable law is to be found in the DHS policies and procedures in effect at the relevant time period.

The first DHS manual section that is applicable in this case is PAM Item 720, "Intentional Program Violation," which became effective October 1, 2007. This policy was in effect on December 19, 2007. It is similar to the current version, BAM 720, "Intentional Program Violation," which can be found online at www.michigan.gov/dhs-manuals.

I quote here from PAM 720, which was in effect on December 1, 2007:

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.

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 720, effective October 1, 2007, p. 1. (Bold print in original.)

I have examined all of the documents and testimony presented in this case. I begin by looking at the first of the three requirements, or elements, of IPV as stated in the policy. This first requirement is that, during the hearing, DHS must prove Respondent's intent by clear and convincing evidence. I must determine first, therefore, whether Respondent intentionally failed to disclose information which, in this case, would be the employment of a household member. If I determine that Respondent did not intentionally fail to disclose the employment of a household member, then I must deny DHS' request for an IPV finding.

I have examined all of the documents and testimony in this case. I find and conclude that Respondent did not fail to disclose information about a household member. I find that Respondent did not conceal any information whatsoever. As she did not conceal any information, it is impossible for me to ascribe a reason, much less an unlawful one, to an act which never occurred.

I find that Respondent provided complete information to DHS and, as no act occurred, DHS has failed to meet the first requirement necessary to prove an IPV, the requirement of intent to do an act. As there are three requirements for an IPV and all three must be met, it is impossible for DHS to establish by clear and convincing

evidence in this case that an IPV occurred. I find that, even if DHS proved the second and third elements, DHS would have failed to prove an IPV. Accordingly I find it is not necessary for me to examine the remaining two elements, i.e., whether Respondent was correctly instructed as to her reporting responsibilities and whether she was physically or mentally incapable of providing complete information to DHS.

I will, therefore, go on to the determination of what the parties' rights and responsibilities are in this case in light of my finding that no IPV has occurred. Based on all of the evidence in this case taken as a whole, I decline to find that Respondent intentionally failed to report the employment of a household member. I conclude that the Department failed to establish that Respondent committed a FAP IPV. DHS' request for a finding of a FAP IPV is DENIED.

Although I do not find an IPV in this case, the remaining question of recoupment must be considered as well. I find that there is another manual section I must apply in this case, Program Eligibility Manual (PEM) 212, "Food Assistance Program Group Composition." PEM 212 came into effect on October 1, 2007, and was still in effect on December 19, 2007. It is similar to current policy, BEM 212, which can be found online at www.michigan.gov/dhs-manuals. I believe this section is relevant because Respondent, on page 2 of the application, was asked to list persons temporarily absent from the home, and she listed her son, [REDACTED].

"Temporary absence" is a term that is specifically defined in PEM 212:

Temporary Absence

A person who is temporarily absent from the group is considered living with the group.

A person's absence is temporary if:

- His location is known; **and**
- He lived with the group before his absence (newborns are considered to have lived with the group); **and**
- There is a definite plan for his return; **and**
- The absence has lasted or is expected to last 30 days or less.

Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home. PEM212, p. 2 of 11, October 1, 2007. (Bold print in original.)

Based on PEM 212, I find and conclude that Respondent's son, [REDACTED], was not a household member because his absence was expected to last more than thirty days. I base this on the fact that the evidence indicates he lived in Lansing and was employed there at the time in question. I find that this makes him a permanently absent person for purposes of DHS FAP group composition.

I find that [REDACTED] himself shall be excluded from the FAP household group. I find that the correct group composition in this case is five and not six persons and the recoupment amount must be adjusted accordingly. Not only must [REDACTED] income be deleted, but, in addition, [REDACTED] himself must be taken out of the FAP household group.

I find that there is clear and convincing evidence to prove that Respondent received an overissuance of FAP benefits. I conclude DHS has established that an overissuance of FAP benefits occurred and DHS is entitled to recoup it. DHS' request for a finding of IPV is DENIED; however, DHS is entitled to recoupment and shall recalculate the appropriate amount of recoupment as a condition of the recoupment process.

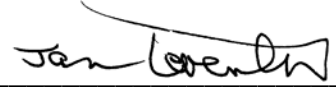
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that DHS failed to establish by clear and convincing evidence that a FAP IPV occurred. DHS' request is DENIED.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides DHS has established that Respondent received an overissuance of FAP benefits, in that she received benefits for a FAP household group of six persons, when she was, in fact, entitled to FAP benefits for a family group of only five persons. The calculations presented at the hearing are incorrect as they are based on a group of six

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persons and also include [REDACTED] income. The Judge ORDERS that DHS shall recalculate Respondent's correct benefits, excluding [REDACTED] income and using the FAP rate for a family of five, and if it is then appropriate, DHS may proceed with the recoupment process.



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

Date Signed: October 7, 2010

Date Mailed: October 7, 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: [REDACTED]