

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: 201030187
Issue No: 3055; 1052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 2, 2011
Macomb 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 February 2, 2011. 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 and FIP benefits during the period of February 2009 through April 2009.
- 2) On January 14, 2009, respondent filed a DHS-1171, requesting FAP and FIP benefits.
- 3) Respondent reported on this application that her child was in the household.
- 4) Respondent's child had, in fact, been placed in a limited guardianship and was no longer in the household.
- 5) Respondent also forged a DHS Shelter Verification form in February 2009, to provide proof that her child was still in the home.
- 6) Respondent was receiving FAP and FIP benefits during this time.
- 7) Respondent was aware of the responsibility to report all eligibility information accurately to the Department.
- 8) On January 27, 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.
- 9) 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] [REDACTED] [REDACTED].
- 10) OIG Agent Thomas Walsh represented the Department at the hearing; respondent did not appear.

11) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 (DHS or Department) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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. 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).
 - (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 for the purpose of committing an IPV.

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. Furthermore, there is clear and convincing evidence that the respondent intended to mislead the Department with regard to her FAP and FIP eligibility.

Respondent told the Department in January 2009, that her child was in the home. Had the respondent had a group change after this application, the underlying issue would have been merely a failure to report the group change, and the Administrative Law Judge would admit that there would be doubts as to whether the respondent intentionally meant to mislead the Department, or had a simple lapse of memory.

However, respondent's conduct, as presented by the Department, paints a very different picture. Respondent's child was placed in a limited guardianship and removed from the home before the respondent filed her application. Respondent therefore reported false information to the Department; this rises far beyond a memory lapse. Furthermore, respondent's forging of a verification form by signing the name of another person to the verification, as shown by clear and convincing evidence, elevates respondent's conduct into outright fabrications. It appears that the respondent actually produced and submitted false information for the Department. For that reason, the undersigned believes that this falsehood was clear and convincing evidence of intent to

mislead the Department in an attempt to defraud the Department—an intentional program violation.

Therefore, as a result of the failure to report all income in a timely manner, respondent committed an IPV, and received an over-issuance in benefits, starting with her February 27, 2009 benefit month.

Finally, the agency is requesting recoupment amounts that include in the corrected FAP budget income respondent received from FIP benefits. As FIP benefits will be recouped, it would be improper to use this amount as part of respondent's unearned income. The Department may not recoup more benefits than it is rightly entitled to, and calculating an FAP budget using FIP amounts when that FIP amount is subject to recoupment would be akin to double dipping from the recoupment. While policy requires that actual unearned income from FIP amounts received during a fraud period be taken into account, the undersigned interprets this to mean income that a respondent received and will have continued to receive—not income that will be recouped.

Therefore, after reviewing Department Exhibit 9, the program issuance budgets, the undersigned disagrees with the amount that the Department is lawfully entitled to recoup. Thus, the undersigned has reviewed the budgets and recalculated accordingly:

1. For the month February 2009, the Department calculated that the over-issuance amount was \$147 in FAP allotments; the undersigned finds that the correct over-issuance amount is \$74, after calculating the actual amount of income respondent received during the month, factoring in the proper deductions, and consulting the proper issuance tables.

2. For the month of March 2009, the Department calculated that the over-issuance amount was \$147 in FAP allotments; the undersigned finds that the correct over-issuance amount is \$74, after calculating the actual amount of income respondent received during the month, factoring in the proper deductions, and consulting the proper issuance tables.
3. For the month of April 2009, the Department calculated that the over-issuance amount was \$167 in FAP allotments; the undersigned finds that the correct over-issuance amount is \$94, after calculating the actual amount of income respondent received during the month, factoring in the proper deductions, and consulting the proper issuance tables.

Therefore, the undersigned finds that the correct amount that the Department may recoup in improperly issued FAP benefits is \$242.

The Department may recoup improperly issued FIP benefits in the amount of \$806.

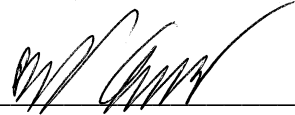
Finally, as a result of the IPV, the Department properly requested that the respondent be disqualified from participation in the FAP and FIP program for the period of one year.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed an Intentional Program Violation of the FAP program and the Department is entitled to recoup the over-issuance of \$242.00 in FAP benefits and \$806.00 in FIP benefits.

Accordingly, the respondent is disqualified from participation in the FAP and FIP programs for a period of one year.

The Department is entitled to recoup the over-issuance of benefits respondent ineligibly received. Respondent is ORDERED to reimburse the Department for the over-issuance.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 02/15/11

Date Mailed: 02/16/11

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:

