

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.: 2010-30194
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 did not appear. [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 June 21, 1983, Respondent began working as a [REDACTED] for [REDACTED].
2. On November 8, 2007, Respondent applied for FAP benefits. She signed the application 2 inches below this statement:

“AFFIDAVIT - I certify, under penalty of perjury, that all the information that I have written on this form or told to a specialist is true. I understand that I can be prosecuted for perjury if I have intentionally given false information.... I also know that if I have intentionally left out any information...which causes me to receive assistance I am not entitled to or more assistance than I am entitled to, I can

be prosecuted for fraud and/or required to repay the amount wrongfully received.”

3. Respondent’s application contains no employment information.
4. In November 2007, Respondent began receiving FAP benefits.
5. On October 31, 2008, Respondent’s FAP benefits ended.
6. On January 26, 2010, DHS sent Intentional Program Violation Repayment Agreements and Disqualification Consent Agreements, Forms DHS-4350 and DHS-830, to Respondent’s address. Respondent failed to sign and return the documents.
7. On August 27, 2010, DHS issued a Notice of Disqualification Hearing/Request for Waiver of Disqualification Hearing, Form DHS-827, and sent it to Respondent with accompanying documentation.
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.mich.gov/dhs-manuals.

DHS alleges that from November 1, 2007-October 31, 2008, a period of one year, Respondent committed an IPV in that she intentionally failed to report earned income. DHS alleges Respondent unlawfully received FAP benefits of \$1,414. 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 now turn to this question: is there clear and convincing evidence to prove that Respondent committed an UIPV according to law? In this case, the applicable law is to be found in DHS’ policies and procedures in effect at the relevant time period.

The DHS manual section that is applicable in this case is Program Administrative Manual (PAM) Item 720, “Intentional Program Violation,” which became effective

October 1, 2007. PAM 720 was in effect on November 1, 2007, the beginning of the alleged IPV period.

PAM 720 is not available online, but it is similar to the current policy, 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 November 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. BAM 720, effective August 1, 2008, 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 BAM 720. This first requirement is that, during the hearing, DHS must prove Respondent's intent by clear and convincing evidence. Therefore, I must first determine whether Respondent intentionally failed to disclose information, which in this case is income. If I determine that Respondent did not intentionally fail to disclose earned income, then DHS has not proved the first IPV element and I must deny DHS' request for an IPV finding.

However, if I determine that Respondent did not know she was required to report income, I cannot find she had the intent not to do it. This question immediately leads me to the second IPV requirement, which is whether Respondent was clearly and correctly instructed about her reporting responsibilities.

Having reviewed all of the testimony and documents in this matter, I find and determine that Respondent was clearly and correctly instructed regarding her reporting responsibilities. Respondent signed on the DHS application only 2 inches below an Affidavit statement requiring her to certify that she did not leave any information off of her application. I conclude that this establishes that she knew she was required to report income and she did not do so.

I conclude that, in this case, DHS has produced clear and convincing evidence that Respondent knew her reporting responsibility. As I have determined that Respondent had knowledge of her duties, which is the second IPV requirement, I now return to the first IPV element, Respondent's intent.

Regarding the first IPV element of intent, I find and determine that Respondent intentionally failed to report income. My findings of fact in this case are that Respondent did not report her job at [REDACTED] when she applied for FAP benefits and thereafter during her receipt of FAP benefits for one year. I conclude that Respondent continued to receive FAP benefits while she worked, causing her FAP award to be higher than it would have been if she had reported her income. I conclude that this history constitutes clear and convincing evidence that Respondent failed to report income for the purposes of establishing, maintaining, increasing, and preventing the reduction of FAP benefits. I find that the requirement of intent has been established by clear and convincing evidence in this case.

As I have examined the first two elements, I turn to the third and last element of IPV, which is incapacity. I find nothing in the record to indicate any physical or mental impairment that limits Respondent's understanding or ability to fulfill her reporting responsibilities. I conclude, therefore, that the third IPV element has been met, and I find that Respondent has no apparent physical or mental impairment that limits her understanding or ability to fulfill the reporting responsibilities.

Based on all of the evidence in this case taken as a whole, I find that Respondent intentionally failed to report income. I conclude that DHS has established by clear and convincing evidence that Respondent intentionally committed an FAP IPV. DHS' request for a finding of FAP IPV is GRANTED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that DHS has established by clear and convincing evidence that a first-time FAP IPV occurred in this case. DHS' request for a finding of IPV is GRANTED. The Administrative Law Judge ORDERS that DHS is entitled to recoup FAP benefits ineligibly received by Respondent from November 1, 2007-October 31, 2008, in the amount of \$1,414.



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:

