

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.: 2010-33610
Issue No.: 1052
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 4, 2010
Marquette County DHS

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 the Department of Human Services' (DHS) request for a hearing. After due notice, a telephone hearing was held on August 4, 2010. Respondent did not appear. [REDACTED], DHS, appeared and testified for DHS.

ISSUES

1. Whether Respondent committed an Intentional Program Violation (IPV) of the Family Independence Program (FIP)?
2. Whether Respondent received an overissuance (OI) of benefits that DHS is entitled to recoup?

FINDINGS OF FACT

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

1. OIG filed a hearing request to establish OI as a result of Respondent having committed an IPV. OIG also requested that Respondent be disqualified from receiving program benefits.
2. On July 9, 2008, Respondent applied for FIP benefits with DHS. On page 8, she listed a checking account as her sole asset.

3. Respondent has no physical or mental impairment that would limit her understanding or ability to report all information and to give complete and accurate information.
4. On May 26, 2009, Respondent withdrew \$800 from an Individual Retirement Account in her own name. The remaining balance in the account was \$7,975.75.
5. In July, 2009, Respondent voluntarily disclosed to DHS the existence of the IRA at her Redetermination Interview.
6. On October 23, 2009, Respondent was interviewed by OIG [REDACTED] and said, “[D]ue to the pending divorce, the IRA wasn’t listed – she didn’t know if it would be her’s (sic) when the divorce finalized.”
7. From August, 2008, to July, 2009, Respondent received FIP benefits totaling \$5,994.
8. A Notice of Disqualification Hearing was mailed to Respondent at her last known address and it was not returned as undeliverable by the U.S. Post Office.

CONCLUSIONS OF LAW

FIP was established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 United States Code Sec. 601, *et seq.* DHS administers FIP pursuant to MCL 400.10, *et seq.*, and Michigan Administrative Code Rules 400.3101-3131. Current DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

I shall consider whether there is clear and convincing evidence in the record in this case, to show that Respondent committed an Intentional Program Violation according to the law. In this case, the applicable law is to be found in the DHS policies and procedures in effect on July 9, 2008, the date Respondent applied for benefits.

The DHS manual section that is applicable in this case is the Program Administrative Manual (PAM) Item 720, “Intentional Program Violation,” effective July 1, 2008. The July 1, 2008 version was in effect on July 9, 2008. It is similar to the current policy, BAM 720, “Intentional Program Violation,” which can be found online. *Id.*

I quote the language of PAM 720 in effect July 9, 2008:

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 July 1, 2008, p. 1. (Bold print in original.)

I have examined all of the documents and testimony presented in this case. There are three elements for an IPV to be established, and DHS must establish all three of them.

The first IPV element is intentionally failing to report information, or, reporting incomplete or inaccurate information, for the purpose of receiving incorrect benefits. In this case, it is undisputed that Respondent failed to report the IRA on July 9, 2008, and, the real question is whether she failed to disclose it intentionally. I will consider all of the information about Respondent on the record in deciding whether her failure was intentional as that word is defined by DHS policy.

I look first at the application document, specifically Section G, "Asset Information" on page 8 of the application. Question 1 is, "Does anyone in your household have any assets? (include assets owned with another person)." Respondent listed only a checking account at [REDACTED]. There is a box to check for an IRA account, and it is blank. It is clear that Respondent failed to list the IRA account on her application.

I next consider that Respondent voluntarily provided the information about the IRA a year later. There are no documents in the record from the Redetermination for me to

consider in this case. However, there is a statement in the record, made during the OIG investigation in October, 2009, three months after the Redetermination.

“[D]ue to the pending divorce, the IRA wasn’t listed – she didn’t know if it would be her’s (sic) when the divorce finalized.”

Respondent told OIG she did not know if the asset would belong to her when the divorce was final. I conclude that it is entirely possible that Respondent’s disclosure of the IRA in July, 2009, was triggered by the certainty that the asset was now hers. I think that this was, in all probability, caused by the finalization of the divorce. I think it is realistic to recognize that, when people are in litigation such as divorce, their assets can be frozen or it is contemplated that the assets will not be consumed while the lawsuit is pending. While I agree that Respondent, nonetheless, should have listed the asset, based on the uncertainty of her circumstances, I do not believe she made her decision in order to receive benefits that were unlawful.

Accordingly I do not find that an IPV occurred in this case as the first element of the violation has not been proven by clear and convincing evidence. DHS’ request for an IPV finding is DENIED. I conclude that client error caused an overissuance of benefits in this case and DHS is entitled to recoupment in the amount of \$5,994.

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 FIP Intentional Program Violation occurred. DHS’ request for a finding of IPV is DENIED.

DHS has established that Respondent received an overissuance of FIP benefits in the amount of \$5,994. DHS is entitled to recoup it.



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

Date Signed: August 9, 2010

Date Mailed: August 9, 2010

2010-33610/JL

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:

