

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.: 201036055
Issue No.: 3052/3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 21, 2010
Marquette County DHS

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on July 21, 2010. The 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). [REDACTED], OIG representative appeared on behalf of the Department.

ISSUE

Whether respondent committed an Intentional Program Violation (IPV) and whether the respondent received an over-issuance of benefits that the Department 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. 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 IPV. The OIG also requested that respondent be disqualified from receiving program benefits.
2. Respondent was a recipient of FAP benefits during the period of April 2008 through February 28, 2009.
3. Respondent was aware of the responsibility to report all income in the household to the department and had no apparent physical or mental

impairment that would limit the understanding or ability to fulfill this requirement.

4. Subsequently, the Respondent began working for [REDACTED], [REDACTED] which employment and income was verified by the employer and indicated that the Claimant began working on August 25, 2008 and stopped working on February 30, 2009.
5. The Claimant may have reported at some point that she was working for the employer and receiving income on a form 1171 with no date. See Page 10 of Department's submissions.
6. As a result of the failure to report all income or do so within 10 days of starting her employment, respondent did not commit an IPV but did receive an over-issuance of benefits.
7. As a result, respondent received an over-issuance calculated by the Department in the amount of \$1,086.00 under the FAP program.
8. The Department has not established that respondent committed an IPV.
9. A notice of disqualification hearing was mailed to respondent at the last known address and was not returned by the US Post Office as undeliverable.

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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to CML 400.10 *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A. IPV

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over issuance (OI). BAM 700, p. 1. DHS must inform clients of their reporting responsibilities and prevent OIs by following BAM 105 requirements informing the client of the requirement to promptly notify DHS of all changes in circumstances within 10 days. BAM 700, PAM 105. Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.

An Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1. 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).

For FIP and FAP, the IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines there was an Intentional Program Violation. BAM 720, p. 1. The amount of the OI is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. PAM 720, p. 6.

In the present case, the Department has established that respondent was aware of the responsibility to report all income in the household and had no apparent limitations to fulfilling this requirement. The respondent filed a DHS 1171 on March 5, 2008 reporting no income and indicating she was unemployed which was correct. While the Respondent did begin employment in August 2008 and began receiving income, the Claimant did not apparently misrepresent intentionally that she was not receiving income on a subsequent Department form or other reporting requirement and no such misrepresentation was reported. At best the claimant may have possibly reported late which is not intentional misrepresentation, but more likely client error. The one page document indicating the respondent did report her employment is undated. This being the case the requisite intent has not been established to show an intentional misrepresentation. While at some point the Claimant should have reported the income and her employment status her failure pre se is not in and of itself proof of intention to misrepresent. As a result, it is found that the respondent did not commit an IPV and is not to be disqualified from the FAP program for a period of twelve (12) months.

B. Recoupment

The federal regulations define household income to include all earned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. PEM 550. Under 7 CFR 273.9, as amended, \$125.00 is deducted from the gross income of FAP recipients in determining FAP grants. Unearned income includes FIP benefits, SSI payments for family members (PEM 500, p. 33) and child support (PEM 500, p. 10).

Under 7 CFR 273.9 deductions for excess shelter are also made. PEM 554. Id. There is a standard heat and utility deduction as well as a standard deduction for telephone bills. Id. The standard deductions are a set amount that is applied regardless of the actual expenses incurred by the Claimant.

In the present case, the Administrative Law Judge has personally checked the submitted budgets for accuracy. Based upon the foregoing facts and relevant law, it is found that the Department is entitled to recoup \$1086.00 from the Respondent for overpayment of FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent committed an IPV with regard to the FIP and FAP programs and received over-issuances in program benefits.

It is ORDERED that the Department is not entitled to a finding that an Intentional Program violation was committed by the respondent and therefore the respondent is not disqualified from the FAP program for a period of 12 months.

It is further ORDERED that the Department recoup for over-issuance in FAP benefits in the amount of \$1,086.00.

Lynn M. Ferris
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: [Click here and type Date Signed]

Date Mailed: [Click here and type Date Mailed]

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.

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cc:



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