

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.: 201036061  
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 FAP 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. The Respondent received Food Assistance benefits, (FAP) during the period January 2, 2007 through June 4, 2007.
3. At the time she applied for benefits the Respondent indicated that she was living in the State of Michigan.

4. During the period February 21, 2007 through June 4, 2007 the Respondent used her food stamp benefits in Wisconsin and Minnesota.
5. The Department did not provide identification or an address where the Claimant resided in either Wisconsin or Minnesota and thus did not establish that the claimant moved from Michigan and that her use of food stamp benefits in Wisconsin and Minnesota was not as a Michigan resident.
6. The record of FAP purchases by the Respondent also indicates that she traveled widely through the state of Michigan during the month of January 2007.
7. Respondent was aware of the responsibility report a change in circumstances, and accurately reporting her change in circumstance including permanently moving from the State of Michigan and had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
8. The Department has not established that respondent committed an IPV. The Department has not established that the Claimant received an over issuance of FAP benefits.
9. A notice of disqualification hearing was mailed to respondent at the last known address.
10. The Department's request for hearing as it pertains to FAP benefits was mailed to respondent at the last known address and was not returned by the US Post Office.

### **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).

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over issuance (OI). PAM 700, p. 1. DHS must inform clients of their reporting responsibilities and prevent OIs by following PAM 105 requirements

informing the client of the requirement to promptly notify DHS of all changes in circumstances within 10 days. PAM 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. PAM 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).

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 change in circumstances and correctly and change in living circumstances and report household income and that she had no apparent limitations to fulfilling this requirement. The proofs established at best that the Claimant spent her FAP benefits in Wisconsin and Minnesota for a several month period but did not establish that the Claimant had taken up residence out of state or that she no longer intended to return to Michigan.

The Department did not establish any address for the Claimant other than her Michigan address and no addresses were offered to show the Claimant lived in either Wisconsin or Minnesota. The Claimant did after the period in question take up residence in Canada as evidenced by a Canadian driver's license.

The evidence presented shows at best that the Claimant was traveling around and that even while in Michigan traveled to different counties while receiving FAP benefits. Without proof of residence or other identification showing an address out of State during the period in question, the Department has not established an intentional program violation or an over issuance of FAP benefits. The Claimant realistically could have been traveling around with her family hoping to find work during the period with no intent of leaving Michigan. The bottom line, without proof of an address or other contact establishing her intent to permanently leave Michigan the Department's allegations are speculative as to what the Claimant intended while out of state.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that respondent did not commit an IPV with regard to the FAP program and did not receive an over issuances in program benefits.

It is ORDERED that the Department is not entitled to recoup for over issuance in FAP benefits.

It is further ORDERED that the Department is not entitled to a FAP program disqualification as the evidence presented did not establish an Intentional Program Violation.



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

Date Signed: 07/27/2010

Date Mailed: 07/27/2010

**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.

LMF/jlg

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