

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.: 2010-38522
Issue No.: 1052, 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 4, 2010
Oakland County DHS (04)

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 upon 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], appeared and testified for DHS.

ISSUE

Is there clear and convincing evidence to show that Respondent intentionally failed to report earned income?

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 May 25, 2004, Respondent completed an application for Family Independence Program (FIP) and Food Assistance Program (FAP) benefits, stating she was unemployed.
2. On June 28, 2004, Respondent became employed as a [REDACTED].
3. Respondent did not report her employment to DHS.
4. Respondent's last day worked was on or about November 5, 2004.
5. On October 8, 2007, October 19, 2007, and November 5, 2007, DHS sent Respondent an Intentional Program Violation Repayment Agreement and a

Disqualification Consent Agreement, Forms DHS-4350 and DHS-830. On each occasion, Respondent failed to sign and return the documents.

6. On June 29, 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.
7. This is the second Intentional Program Violation (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 (CFR). DHS administers FAP pursuant to Michigan Compiled Laws (MCL) Section 400.10 *et seq.* and Michigan Administrative Code Rules (MACR) 400.3001-3015. DHS' 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.

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 MACR 400.3101-3131. DHS' FIP policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). www.mich.gov/dhs-manuals.

DHS alleges that, from August 1, 2004, through November 30, 2004, a period of four months, Respondent committed an IPV in that she intentionally failed to report her income. DHS alleges Respondent received \$1,751 FAP and \$2,946 FIP benefits unlawfully.

DHS requests findings of FAP and FIP IPV's and, in the event that the Administrative Law Judge makes these findings, DHS asks that Respondent be disqualified from receiving benefits for second-time IPV offenses.

The applicable manual section in this case is the April 1, 2004, Program Policy Administrative Manual (PAM) Item 720, "Intentional Program Violation." It is similar to BAM 720, "Intentional Program Violation," which can be found online at www.mich.gov/dhs-manuals. I quote the language of the PAM policy in effect on June 28, 2004:

Suspected IPV

Suspected IPV means an OI [overissuance] exists for which **all three of the following conditions exist:**

- the customer 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 customer 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 the customer has **intentionally** withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. **There must be clear and convincing evidence that the customer acted intentionally for this purpose.** PAM 720, effective April 1, 2004, p. 1. (Underlining in original; bold print added for emphasis.).

I have examined all of the documents and testimony presented in this case. In this case, DHS alleges that Respondent's May 25, 2004, application was correct, but on June 28, 2004, when she began working, she intentionally violated program requirements by failing to report income.

However, I find nothing in the record in this case to substantiate the conclusion that Respondent was clearly and correctly instructed regarding her reporting responsibilities. I look first to the application form. I find no language in the application form advising Respondent of her reporting responsibilities. Second, DHS' Evidence List states that the Application contains an acknowledgement by the Respondent of her obligation to report changes in circumstances, but I find no such language in DHS' Department Exhibit 1.

Third, the OIG Agent testified that a tear-off section of the application was given to the client and that it contained reporting requirements. However, I have no knowledge of the contents of a document that may have been given to Respondent, but was not presented at the hearing. While it is possible that such a document might establish that

Respondent was clearly and correctly instructed about her reporting responsibilities, I cannot presume it in the absence of clear and convincing evidence. I conclude that there is no clear and convincing evidence in the record to prove that Respondent was clearly and correctly informed of her reporting responsibilities.

Based on all of the evidence in this case taken as a whole, I decline to find that Respondent intentionally failed to report earned income. I conclude that DHS has failed to establish that Respondent intentionally committed FIP and FAP IPVs. DHS' request for a finding of FIP and FAP IPVs is DENIED.

I do find, however, that there is clear and convincing evidence to prove that Respondent received an overissuance of FAP benefits. I conclude DHS has established that an overissuance of FAP benefits occurred and DHS is entitled to recoup it.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that DHS has failed to establish by clear and convincing evidence that FIP and FAP IPVs occurred. DHS' request is DENIED.



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

Date Signed: August 5, 2010

Date Mailed: August 5, 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:

