

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.: 2010-38526  
Issue No.: 1052  
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 on 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**

Whether there is clear and convincing evidence to prove that Respondent intentionally failed to report a change of residence to an out-of-state location?

**FINDINGS OF FACT**

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

1. On August 14, 2008, Respondent applied for Food Assistance Program (FAP) benefits for herself and her child.
2. On or about February 16, 2009, Respondent moved to Ohio.
3. Respondent did not report the change of residence to DHS.
4. Respondent continued receiving FAP benefits until December 23, 2009.
5. On January 14, 2010, DHS sent two identical items of correspondence to Respondent at two Michigan addresses: Intentional Program Violation Repayment Agreements and Disqualification Consent Agreements, Forms DHS-4350 and DHS-830. On January 27, 2010, DHS sent the same documents to a third address in Cambridge, Ohio. 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 first 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](http://www.mich.gov/dhs-manuals).

DHS alleges that, from March 2, 2009 through December 23, 2009, a period of nine months, Respondent committed an IPV in that she intentionally failed to report her change of residence out of the State of Michigan. DHS alleges Respondent unlawfully received FAP benefits of \$1,362.

DHS requests a finding of a FAP Intentional Program Violation and, in the event that the Administrative Law Judge makes this finding, DHS asks that Respondent be disqualified from receiving benefits for a first-time IPV offense.

The applicable DHS manual section in this case is the Policy Administrative Manual (PAM) Item 720, "Intentional Program Violation," effective July 1, 2008. This version was in effect on March 2, 2009. It is similar to the current policy of BAM 720, "Intentional Program Violation," which can be found online at [www.michigan.gov/dhs-manuals](http://www.michigan.gov/dhs-manuals).

I quote the language of PAM 720 in effect on March 2, 2009:

Suspected IPV

**Suspected IPV** means an OI [overissuance] 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.

Intentional Program Violation (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. DHS alleges that Respondent's August 14, 2008, application was truthful. However, DHS further alleges that she moved out of state and intentionally failed to report her change of residence, causing DHS to continue her FAP benefits from March 2, 2009, through December 23, 2009.

However, I find nothing in the record 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. Both DHS' Investigative Report and Evidence List state that the Application contains an acknowledgement by the Respondent of her obligation to report changes in circumstances, but I find no such language in the Application.

Second, while the application does indicate that Respondent was given an Information Booklet, [REDACTED] testified that DHS did not keep a copy of the booklet and she could not present it at the hearing. I cannot presume what the Information Booklet states. The application form has a footnote stating that it is revised from time to time, and it may be that the reporting requirements were changed on the application forms. While it is possible that such a document might establish that Respondent was clearly and correctly instructed about her reporting responsibilities, I cannot conclude that clear and convincing evidence has been presented to establish that fact. 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.

I conclude that DHS failed to produce clear and convincing evidence that Respondent knew of her reporting responsibility. Knowledge is the second requirement of PAM 720, and I cannot presume it. Without evidence that Respondent was aware of her responsibility, I cannot conclude she had the intent *not* to fulfill her responsibility.

Based on all of the evidence in this case taken as a whole, I decline to find that Respondent intentionally failed to report an out-of-state change of residence. I conclude that DHS failed to establish that Respondent intentionally committed a FAP IPV. DHS' request for a finding of a FAP IPV 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 failed to establish by clear and convincing evidence that a FAP Intentional Program Violation occurred. DHS' request is, therefore, DENIED. DHS has established that Respondent received an overissuance of FAP benefits which DHS is entitled to recoup.



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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:

