

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.: 2010-38540
Issue No.: 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 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 on behalf of DHS.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP)?

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 June 1, 2007, Respondent began receiving FAP benefits.
2. On May 12, 2008, Respondent applied for FAP benefits again. A note on his application states, "Client states he is homeless. Will stay w/friends/relatives whenever he can."
3. On April 14, 2009, Respondent applied again for FAP benefits. A note on his application states, "Client states that he is homeless – will sleep @different friends' homes."
4. From April 17, 2009 to May 4, 2009, a period of two and one-half weeks, Respondent made eight FAP purchases in the State of Virginia.

5. On May 7, 2009, Respondent made a FAP purchase in the State of Michigan.
6. On May 9, 2009, Respondent made a FAP purchase in the State of Georgia.
7. On May 11, 2009, and May 14, 2009, Respondent made two FAP purchases in the State of Florida.
8. From May 15, 2009, to June 5, 2009, Respondent made five FAP purchases in the State of Georgia.
9. From June 5, 2009, to January 4, 2010, a period of seven months, Respondent made thirty-eight FAP purchases in the State of Florida.
10. Also, during six days, October 8-14, 2009, Respondent made three FAP purchases in the State of Maryland.
11. Respondent continued to receive FAP benefits until January 4, 2010.
12. On January 14, 2010, DHS sent Intentional Program Violation Repayment Agreements and Disqualification Consent Agreements, Forms DHS-4350 and DHS-830, to Respondent's post office box and to a street address. Respondent failed to sign and return the documents.
13. 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.
14. This is the first 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 MCL Section 400.10 *et seq.* and Michigan Administrative Code Rules (MACR) 400.3001-3015. DHS' current 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.

DHS alleges that, from June 5, 2009 through January 4, 2010, a period of seven months, Respondent committed an IPV in that he intentionally failed to report a change of residence outside of the State of Michigan. DHS alleges first, that Respondent had a requirement of thirty days residency in Michigan in order to be eligible for FAP benefits;

second, that he moved out of state on May 9, 2009; and, third, that he became ineligible for FAP benefits as of June 5, 2009, thirty days after he left the state.

DHS alleges Respondent unlawfully received FAP benefits of \$1,600. DHS requests a finding of a FAP IPV and, in the event that the Administrative Law Judge makes this finding, DHS asks that Respondent be disqualified from receiving benefits for an IPV first-time offense.

I turn now to the question: is there clear and convincing evidence to prove that Respondent committed an IPV according to the law? In this case, the applicable law is to be found in the DHS policies and procedures in effect at the relevant time period.

The DHS manual section that is applicable in this case is BAM Item 720, "Intentional Program Violation," effective April 1, 2009. This version was in effect on June 5, 2009. It is similar to the current version of BAM 720, "Intentional Program Violation," which can be found online at www.michigan.gov/dhs-manuals.

I quote the language of BAM 720 in effect June 5, 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.

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. BAM 720, effective April 1, 2009, p. 1. (Bold print in original.).

I have examined all of the documents and testimony presented in this case. I look first to the second requirement for finding an IPV, that is, whether Respondent was clearly and correctly instructed about his reporting responsibilities.

I find nothing in the record to substantiate the conclusion that Respondent was clearly and correctly instructed regarding his reporting responsibilities. I look first to the application forms. I find no language in the application forms in the record advising Respondent of his reporting responsibilities. Both DHS' Investigative Report and Evidence List state that the Applications contain an acknowledgement by the Respondent of his obligation to report changes in circumstances, but I find no such language in the applications in the record.

Second, while the applications do indicate that Respondent was given Information Booklets, ██████ testified that DHS did not keep a copy of the booklets and she did not present them at the hearing. I cannot presume what the Information Booklet stated. I cannot be sure that ██████ testimony about reporting requirements is accurate because the application forms in evidence state that the forms are revised from time to time and ██████ may be mistaken as to the exact contents of the 2008 and 2009 booklets.

I also consider that, without the actual wording of the advice given to Respondent, I cannot conclude whether he was advised he was required to report temporary absences in other states, or whether he was required only to report a change of address. I believe that the language of the alleged 10-day reporting requirement may not have included Respondent's situation, which may have been simply traveling for any number of reasons.

While it is possible that such a document might establish that Respondent was clearly and correctly instructed about his reporting responsibilities, I cannot conclude that clear and convincing evidence has been presented on this issue in the record. I conclude there is no clear and convincing evidence in the record to prove that Respondent was clearly and correctly informed of his reporting responsibilities.

I conclude that the Department failed to produce clear and convincing evidence that Respondent knew of his reporting responsibility. Knowledge is the second of the three requirements of BAM 720, and I cannot presume it. Without evidence that Respondent was aware of his responsibility, I cannot conclude he had the intent *not* to fulfill his responsibility. If intent is not proven, then the first element of the IPV is not established either.

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

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conclude that the Department failed to establish that Respondent intentionally committed a FAP IPV. The Department's 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 IPV occurred. DHS' request is DENIED.

DHS has established that Respondent received an overissuance of FAP benefits. DHS is entitled to recoup it.



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

Date Signed: August 6, 2010

Date Mailed: August 6, 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:

