

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.: 2010-43145
Issue No.: 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 29, 2010
Wayne County DHS (73)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon a request by DHS for an administrative hearing. After due notice, a telephone hearing was held on September 29, 2010. On behalf of Department of Human Services (DHS), [REDACTED], Regulation Agent, appeared and testified. Respondent failed to appear.

ISSUES

1. Whether DHS established that Respondent committed an intentional program violation (IPV) by failing to report employment information.
2. Whether DHS may recoup allegedly over-issued FAP benefits from Respondent.

FINDINGS OF FACT

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

1. Respondent was an ongoing FAP recipient.
2. Respondent reported she worked 35 hours/week for \$8.50/hour on Assistance Applications dated 6/19/06 and 12/27/06.
3. Respondent actually received gross biweekly employment income of approximately \$1000 from 5/27/06 to 8/5/06 and for \$1400 from 8/19/06-8/18/07.

4. DHS over-issued Respondent FAP benefits in the amount of \$2342 over the FAP benefit months of 6/2006-8/2007.
5. DHS requested a hearing alleging that Respondent committed an IPV and sought recoupment of \$2342 in over-issued FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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 MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB). At the time of Respondent's alleged violation, DHS policies were found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Respondent was not present for the hearing. DHS established that a Notice of Hearing was mailed at the last known address listed with the Secretary of State.

This hearing was requested by DHS to establish that Respondent committed an IPV. DHS may request a hearing to establish an IPV and disqualification. PAM 600 at 3.

Intentional Program Violation (IPV) is suspected when a client 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 client acted intentionally for this purpose. PAM 720 at 1.

A clear and convincing threshold to establish IPV is a higher standard than a preponderance of evidence standard and less than a beyond any reasonable doubt standard. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

Suspected IPV means an OI 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. PAM 720 at 1.

The Code of Federal Regulations also defines an IPV. Intentional Program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16(c).

Respondent's signature on an Assistance Application is an affidavit. The affidavit portion of an Assistance Application reads, "I certify, under penalty of perjury, that all of the information that I have written on this form or told to a specialist is true. I understand that I can be prosecuted for perjury if I have intentionally given false information. I also know that I may be asked to show proof of any information I have given. I also know that if I have intentionally left out any information or if I have given false information, which causes me to receive assistance I am not entitled to or more assistance than I am entitled to, I can be prosecuted for fraud and/or required to repay the amount wrongfully received."

Respondent's signature on an Assistance Application is also an acknowledgement that Respondent was given the Acknowledgements attached to the Assistance Application. A portion of the Acknowledgements explain the expected reporting requirement to clients. Part of that requirement is to report starting or stopping income to DHS.

Respondent's signature dated 6/19/06 on the Assistance Application (Exhibit 5) is sufficient verification that Respondent was instructed concerning reporting responsibilities. DHS also presented a second Assistance Application (Exhibit 6) dated 12/27/06. Also, there was no evidence that would indicate Respondent had any disabilities or impairments which would cause Respondent to fail to meet the required reporting responsibilities.

In the present case, DHS alleges that Respondent under-reported employment income from her employer, ██████████ for FAP benefit months 6/06-8/07. As proof of Respondent's alleged fraud, DHS presented three Verifications of Employment (Exhibits 2-4). A Verification of Employment dated 12/28/06 (Exhibit 2) indicated Respondent received income of \$8.50/hour for 35 hours of work every two weeks. A Verification of Employment dated 6/15/06 (Exhibit 3) showed Respondent worked 35 hours/week and received \$8.50/hour. This verification also stated Respondent received income of \$472.86 on 5/5/06 and \$497.74 on 5/19/06. A third Verification of Employment (Exhibit 4) dated 8/6/07 stated Respondent worked 25-30 hours/week and made \$8.50/hour.

DHS also provided Assistance Applications (Exhibits 5 and 6) which indicate that Respondent reported employment with Family Dollar. Exhibit 5 was signed and dated by Respondent on 6/19/06. Exhibit 6 was signed and dated by Respondent on 12/27/06. Respondent stated on both applications that she was employed 35 hours/week and made \$8.50/hour. Using Respondent's reported employment hours and wage, Respondent would have received \$595/two weeks.

DHS also provided information concerning Respondent's [REDACTED] employment from the Worknumber. The Worknumber is an information database by which DHS can obtain employment history for clients if their employer participates with the Worknumber. The Worknumber verified that Respondent received gross employment earnings of \$1400/two weeks for every pay period including and between 8/19/06-8/18/07. Respondent also received pays near or exceeding \$1000 for the pay period beginning 6/1/10 until 8/19/06.

The undersigned is inclined to find that the submitted Verifications of Employment contained incorrect employment information. A Verification of Employment is a handwritten form which should be completed by the employer. There is no evidence that the information contained on the Verifications of Employment is authentic or accurate. The Worknumber verification contains information which comes from a neutral party whose primary purpose is to keep accurate employment records. It is found that Respondent's correct employment information is from the Worknumber verification.

With the finding that the Worknumber employment verification was accurate, it must then be considered whether Respondent purposely misreported her employment income. The undersigned is not inclined to give the Verifications of Employment considerable weight in determining whether Respondent committed an IPV. There was not any testimony provided as to how these documents were submitted to DHS. It is plausible that Respondent did not receive the documents and they were sent to DHS directly from Respondent's employer. However, the undersigned does give the inaccuracies within the Verifications of Employment some weight.

The undersigned is concerned with Respondent's statements of her income on the Assistance Applications. The undersigned is not typically inclined to find that a client committed an IPV when the employment was reported but the income was not accurately reported. Many employees endure variances in employment such as fluctuating hours that are outside the control of clients.

The present case involves employment circumstances not so easily excused. Respondent's income was regularly \$1400/two weeks. Respondent reported her income was 42% of what she actually made. Respondent misreported her income on multiple Assistance Applications. Multiple Verifications of Employment also contained inaccurate

information. Based on all of the presented evidence, it is found that Respondent purposely under-reported her employment income to DHS. Accordingly, it is found that Respondent committed an IPV.

If an IPV is established, the following disqualification periods apply: one year for the first IPV, two years for the second IPV and lifetime for a third IPV. PAM 720 at 13. The present case involves Respondent's first IPV. Thus, a disqualification period of one year is applicable.

DHS presented FAP budgets (Exhibit 8) for the over-issuance period which determine Respondent's FAP benefit issuances and the amount Respondent should have received had Respondent's employment been properly reported. It should be noted that IPV budgets do not give clients a 20% disregard for employment income because the income was not properly reported. PEM 556 at 3.

In the present case, DHS alleges that Respondent received a total of \$2342 in over-issued FAP benefits between 6/2006-8/2007. After budgeting Respondent's gross income, DHS calculated that Respondent would have received \$0 in FAP benefits; thus, Respondent was over-issued \$2342 in FAP benefits. The OI budgets appear to be correct and accurate. It is found that Respondent is responsible for repayment of \$2342 in over-issued 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 intentional program violation by failing to accurately report employment earnings. It is further found that Respondent's IPV caused an over-issuance in the amount of \$2342 of FAP benefits. It is ordered that DHS may disqualify Respondent for one year and seek recoupment in the amount of \$2342.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/27/2010

Date Mailed: 10/27/2010

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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.

CG/jlg

cc:

