

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.: 2010-43895
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: December 15, 2010
DHS County: Shiawassee (78)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and the Department of Human Services' (DHS) request for a hearing. After due notice, a telephone hearing was held on December 15, 2010. Respondent [REDACTED] did not appear. [REDACTED], appeared and testified on behalf of DHS.

ISSUE

Whether there is clear and convincing evidence to establish that 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 signed an application for FAP benefits. Her signature appears immediately under this printed statement:

IMPORTANT: YOU MUST SIGN THE APPLICATION

I certify that I have received and reviewed a copy of the Acknowledgments, that explains additional information about applying for and receiving assistance benefits. Department Exhibit 1, p. 23 (bold print in original).

2. From November 23, 2007-May 9, 2008, Respondent was employed at [REDACTED] in [REDACTED] as a Retail Sales Consultant earning an average of \$446 per week.

3. Respondent did not report her income from [REDACTED] to DHS.
4. On March 22, 2010, DHS sent Respondent an IPV Repayment Agreement and requested her signature. Respondent failed to sign the Repayment Agreement.
5. On November 15, 2010, DHS sent a hearing notice to Respondent notifying her of the December 15, 2010, hearing date.

CONCLUSIONS OF LAW

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations found in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3001-400.3015. DHS' FAP policies and procedures are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

In this case, DHS has requested a finding of IPV of the FAP program and, in the event that the Administrative Law Judge makes this decision, DHS asks that Respondent be disqualified from receiving benefits. DHS requests the penalty for a FAP first-time offense in this case.

The applicable manual section in this case is Program Administrative Manual (PAM) 720, "Intentional Program Violation," which was adopted on April 1, 2007, and was in effect on June 1, 2007, the date Respondent signed the DHS application. PAM 720 is an earlier version of BAM 720, "Intentional Program Violation," which is available online. *Id.*

The definition of IPV is similar in both the earlier and current versions of this manual. However, the 2007 PAM 720 Item is not available online. I quote PAM 720 here for reference.

PAM 720 sets forth the definition of IPV in effect on May 22, 2006, on pages 4-5:

INTENTIONAL PROGRAM VIOLATION

DEFINITIONS

All Programs

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 customer 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.

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, p. 1 (bold print and underlining in original).

In this case, I must apply PAM 720 to the facts to determine if all three of the elements of the IPV have been met. I begin with the first element, which requires that the client must have intentionally failed to report information or intentionally given incomplete or inaccurate information needed to make a correct benefit determination. If I determine that any piece of the first requirement did not occur, I will find that the first element has not been met. Furthermore, PAM 720 requires that all three requirements be met. So, if the first element or any other element is not met, then I must find that DHS has failed to prove IPV by clear and convincing evidence and DHS' request must be denied.

With regard to the first element, I find that I must determine only whether Respondent failed to report information, as there is no allegation that she reported incomplete or inaccurate information when she applied. In order to determine whether she failed to report information intentionally, I must move to the second element, knowledge of responsibility, because if Respondent had no knowledge of her responsibility to report income, she cannot be found intentionally to have failed to do so.

I have examined all of the evidence and testimony in this case as a whole. I find that Respondent was awarded benefits in 2007 and was fully knowledgeable about her reporting responsibilities. Respondent received the Acknowledgments materials at the time she signed the DHS application, and this is established by her signature on the application. I find this is clear and convincing evidence that she was informed about her responsibility to report changes of income within ten days.

Returning back to the first element, as I have found that Respondent knew her responsibility, I now find and conclude that she failed to report income to DHS in violation of her responsibility to report changes in income within ten days of the change.

I find that Respondent, by her intentional failure to report income, committed an IPV. DHS has presented clear and convincing evidence to establish that the first two elements of the IPV are met. I now turn to the third element, mental or physical impairment, to see if DHS has established this element as well.

Again, having reviewed all of the testimony and evidence in this case as a whole, I find nothing in the record to indicate that Respondent has a mental or physical impairment that limited her understanding or ability to fulfill her reporting responsibilities. Therefore, I find and conclude that the third IPV element has been satisfied by DHS by clear and convincing evidence.

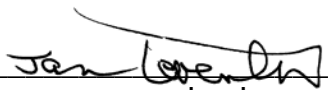
In conclusion, as all three of the elements of the IPV have been established by clear and convincing evidence, I find and decide that an IPV of the FAP program has occurred. DHS' request for an administrative hearing decision of IPV of the FAP program is GRANTED.

I next turn to the penalty DHS has requested in this case, which is a first-time penalty for IPV. I find that the record does establish that a first-time penalty is appropriate, as there is no allegation that Respondent committed previous IPV's.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, GRANTS DHS' request for a finding of IPV of FAP. IT IS ORDERED that the penalty for the FAP IPV shall be the penalty for a first-time offense.

IT IS FURTHER ORDERED that DHS is entitled to recoup the FAP overissuance to Respondent of \$770. DHS shall proceed in accordance with all policies and procedures.



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

Date Signed: December 21, 2010

Date Mailed: December 22, 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.

JL/pf

cc:

