

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.: 2010-43919
Issue Nos.: 1052, 3055
Case No.: [REDACTED]
Hearing Date: December 15, 2010
DHS County: Shiawassee (76)

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 Intentional Program Violations (IPV) of the Food Assistance Program (FAP) and the Family Independence Program (FIP)?

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 September 16, 2003, the State of Illinois issued a driver's license to Respondent displaying her address as [REDACTED].
2. In 2007, Respondent was a victim of domestic violence perpetrated by her husband.
3. In January 2008, Respondent separated from her husband and moved from [REDACTED], with her two children to [REDACTED].
4. Respondent was homeless and moved in with a friend in [REDACTED].

5. Respondent intended to remain in Michigan and look for work.
6. On June 27, 2008, Respondent twice signed an application for FAP and FIP benefits. Her signatures appear immediately under this Affidavit:

W. Affidavit

IMPORTANT: Before you sign this application READ the affidavit.

Under penalties of perjury, I swear that this application has been examined by or read to me, and, to the best of my knowledge, the facts are true and complete. If I am a third party applying on behalf of another person, I swear that this application has been examined by or read to the applicant, and, to the best of my knowledge, the facts are true and complete.

I certify that I have received a copy, reviewed and agree with the sections in the assistance application **Information Booklet** explaining how to apply for and receive help: Programs, Things You Must Do, Important Things to Know, Repay Agreements, Information About Your Household That Will be Shared.

I certify, under penalty of perjury, that all the information I have written on this form or told (sic) my DHS specialist or my representative is true. I understand I can be prosecuted for perjury if I have intentionally given false or misleading information, misrepresented, hidden or withheld facts that may cause me to receive assistance I should not receive or more assistance than I should receive. I can be prosecuted for fraud and/or be required to repay the amount wrongfully received. I understand I may be asked to show proof of any information I have given. Dept. Exh. 1, p. 28.

7. Respondent's application listed the following residence address: [REDACTED].
8. On or after June 27, 2008, DHS awarded Respondent FAP and FIP benefits.
9. From November 4-13, 2008, November 29-December 15, 2008, January 4-22, 2009, February 2-9, 2009, and March 4-19, 2009, a total of sixty-six days, Respondent made forty purchases using her FAP Electronic Benefits Transaction (EBT) card in the [REDACTED] and none in the State of Michigan.
10. From November 14-28, 2008, December 16, 2008-January 3, 2009, January 23-February 1, 2009, and March 4-19, 2009, a total of sixty-two days, Respondent made no FAP EBT purchases whatsoever.
11. Respondent's last known address is [REDACTED].

12. On April 20, 2010, DHS sent Respondent an IPV Repayment Agreement and requested her signature. Respondent failed to sign the Repayment Agreement.
13. 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 (MACR) 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.

FIP was established by the U.S. 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 400.3101-400.3131. DHS' FIP policies are found in BAM, BEM and RFT. *Id.*

In this case, DHS requests findings of IPV of the FAP and FIP programs and, in the event that the Administrative Law Judge makes these decisions, DHS asks that Respondent be disqualified from receiving benefits. DHS requests the penalty for FAP and FIP first-time offenses against Respondent.

The applicable manual section in this case is Program Administrative Manual (PAM) 720, "Intentional Program Violation," which was adopted on October 1, 2007, and was in effect on June 27, 2008, 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 earlier and current versions of the 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 June 27, 2008, on page 1:

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 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 [Child Development and Care] provider has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM 720, p. 1 (bold print in original).

In this case, I must apply PAM 720 to the facts to determine if all three 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 must 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. If this is my finding, then DHS' request for an administrative hearing decision of two IPV's 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. So, with regard to a failure to report information, I will first look in the record to determine whether there is clear and convincing evidence as to what piece of information Respondent did not report.

In this case, DHS alleges that Respondent failed to report a change of address to DHS. I have examined all of the evidence and testimony in this case as a whole. Having examined the record in its entirety, I cannot find a particular piece of information that Respondent did not disclose, nor can I identify a particular date when a disclosure should have been made.

First, I find that Respondent's [REDACTED], address is the same in June 2008, when she moved to Michigan, as it is in April and also November 2010, when DHS mailed Respondent the Repayment Agreement and the Notice of Hearing. I consider the fact that Respondent is still at the same address to be evidence showing that she has not moved from that address in the thirty months over which this case has transpired.

Second, I consider the fact that DHS has not produced another address at which it asserts that Claimant currently resides. Indeed, DHS has sent correspondence to the [REDACTED] address twice in the past eight months, and both letters were accepted at that address and were not returned as undeliverable. This fact causes me to believe that Respondent has not moved and has, therefore, not failed to report a change of address.

Third, DHS' evidence of an address change does not consist of proof of a particular new address. It consists of a list of forty EBT purchases made in [REDACTED]. I have read and examined this list and I do not believe that it proves that Respondent lived in Indiana. I find that the list of purchases demonstrates that Respondent was in [REDACTED] for no more than eighteen days at a time, that she came and left Indiana five times in five months, that she was in [REDACTED] for a total of sixty-six days and she was elsewhere for sixty-two days, almost the identical amount of time, and that she was elsewhere for as long as twenty-one days at one time. I do not find this history supports a conclusion that Respondent moved to [REDACTED] or that she left Michigan, for that matter. I find this history displays a pattern of fluctuation but not a change of address. I find it is entirely reasonable to conclude that Respondent remained in [REDACTED], and visited [REDACTED] for the purpose of providing visitation with the children to her estranged husband, for marriage, family or economic reasons, or a variety of other reasons.

I reason further that DHS has not produced clear and convincing evidence of a specific date on which Respondent is alleged to have changed address. Respondent's first EBT purchase in [REDACTED] was on November 4, 2008, but she was in [REDACTED] for just six days and made no purchases in Indiana over the following fourteen days. This in-and-out pattern repeats five times over the five-month period in which DHS alleges Respondent failed to report a change of address. I find it impossible to assign a specific move date in a situation where Respondent has traveled so frequently.

I note the frequency pattern of EBT purchases in [REDACTED] is in stark contrast to the complete absence of EBT purchases in Michigan in the five-month period. I have considered this point, and I am not persuaded that it establishes a change of address. This is because I find that the failure to spend money in a state does not tell me that the person does or does not live in that state.

In conclusion, I find that DHS has not presented clear and convincing evidence that Respondent changed her address and, as a result, I find that DHS cannot establish that

she failed to report a change of address. I find and conclude that the evidence does not support that Respondent did in fact change addresses. I find that DHS has failed to establish the first element of IPV in that DHS has not established that a change of address ever occurred.

My decision in this case is that as DHS cannot prove the first of the three IPV elements, DHS cannot satisfy the requirement that all three IPV elements must be met. I decide, therefore, that DHS' request for an administrative hearing decision of IPV of the FAP and FIP programs is DENIED.

IT IS ORDERED that no IPV has occurred in this case and no violations are found. I find no penalties are appropriate in this case as there are no IPV findings. I further find that no overissuances occurred and DHS may not recoup monies from Respondent.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, DENIES DHS' request for administrative hearing decisions of IPV of FAP and FIP. IT IS ORDERED that as there are no IPV findings in this case, there shall be no penalties against Respondent and DHS may not recoup FAP and FIP benefits from Respondent.

IT IS SO ORDERED.



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

Date Signed: December 21, 2010

Date Mailed: December 22, 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:

