

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.: 2010-46315
Issue Nos.: 1052, 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 3, 2010
DHS County: Wayne (41)

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 MCL 400.37 and the Department of Human Services' (DHS) request for a hearing. After due notice, a telephone hearing was held on November 3, 2010. Respondent did not appear. [REDACTED], appeared and testified on behalf of DHS.

ISSUE

Did Respondent commit Intentional Program Violations (IPV) of the Family Independence Program (FIP) and 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 October 14, 2005, Respondent signed an application for FIP and FAP benefits. Her signature appears immediately after 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 and receiving assistance benefits.
Department Exhibit 1, p. 17 (bold print in original).

2. Respondent's application states there are three children living with her.

3. On or after October 14, 2005, DHS awarded FIP and FAP benefits to Respondent for a family group of four.
4. On May 15, 2006, Respondent submitted an application for State Emergency Relief (SER). Respondent sought assistance to avert a gas utility shutoff. Her two signatures on the application appear immediately below the following statement:

I understand failure to provide the above information may result in denial of my application. I understand I have 8 calendar days to provide all verifications requested. I understand giving false information can result in referral to the prosecutor for prosecution for fraud. I understand that my application may be one of those chosen for a complete investigation. A Department representative may call at my home and may contact other people in order to verify my eligibility for assistance.

....

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. Department Exhibit 1, p. 21 (bold print in original).

5. Respondent's SER application states there are three children living with her.
6. On July 7, 2006, Respondent signed a letter to DHS stating that the three grandchildren left her home on February 1, 2006. The letter is handwritten on unlined paper and states at the bottom, "From [REDACTED]."
7. On May 20, 2010, DHS sent Respondent a Repayment Agreement and requested her signature. Respondent failed to sign the Repayment Agreement.
8. On October 1, 2010, DHS sent a hearing notice to Respondent notifying her of the November 3, 2010 hearing.

CONCLUSIONS OF LAW

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 Michigan Administrative Code Rules (MACR) 400.3101-400.3131. DHS' FIP policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

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 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 Manual (RFT). *Id.*

In this case, DHS has requested findings of Intentional Program Violations in the FIP and FAP programs and, in the event that the Administrative Law Judge makes these findings, DHS asks that Respondent be disqualified from receiving benefits. DHS requests penalties for FIP and FAP first-time offenses in this case.

The applicable manual section in this case is BAM 720, "Intentional Program Violation." The definition of IPV is set forth on page 1:

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. BAM 720, p. 1 (italics added for emphasis).

In this case, I must apply BAM 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 this requirement did not occur, I will find that the first element has not been met. Furthermore, BAM 720 requires that all three of the 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 in this case and their request must be denied.

I have examined all of the evidence and testimony in this case. I find that the applications contained information about the current living arrangements of the three grandchildren. I find that Respondent put accurate information on the forms so that DHS could make a correct benefit determination. I find she did not fail to report information, and she did not intentionally give incomplete or inaccurate information on either application to evade the DHS purpose of making a correct benefit determination.

I therefore find and conclude as a matter of law that Respondent's statements in the applications that her three grandchildren were living with her at the time the documents were executed are truthful, and they were provided to DHS for the purpose of making a correct benefit determination.

I next turn to the July 7, 2006, letter. DHS asserts that this letter should be accepted as conclusive proof that Respondent's grandchildren moved out February 1, 2006, five months before the letter is dated. I will first examine whether the letter is a document which is intended to serve the purpose of making a correct benefit determination. If I determine that this letter was not created for the purpose of making a correct benefit determination in Respondent's case, I must reject it as not meeting the BAM 720 first element. In order to determine the purpose of the letter, I will examine the form and content of the letter itself.

First, I note that it is a handwritten letter on unlined paper. It is not a clearly identifiable form, such as an application form. It is simply a piece of unlined paper with no letterhead at the top. Second, the letter is addressed to a [REDACTED], but, there is no official address block stating who she is or where she works. Third and fourth, the last line of the letter states, "From [REDACTED]." This last line of the letter indicates to me first, that the letter was sent by [REDACTED], Respondent's daughter, for some purpose known to her, and that [REDACTED] has a case, possibly a DHS case, of her own. I make the conclusion about the daughter's case because the case number is not the same as Respondent's case number.

Having considered the form and content of the letter, I find nothing in the form or content of the letter that establishes the purpose of the letter. I find and conclude that it was not generated for the purpose of making a correct benefit determination in Respondent's case. I find that this letter was created by Respondent's daughter for

some purpose of her own unrelated to Respondent's benefits. I find nothing in this letter to indicate that it was created for the purpose of making a correct benefit determination in Respondent's case.

Even if I were to find that this letter was created for the purpose of making a correct benefit determination in Respondent's case, I reject DHS' conclusion because I find that the letter is not as credible as Respondent's applications. The applications were written contemporaneously with the facts they contain about the grandchildren's residence, while the letter is written in July and discusses an event that occurred five months earlier. I find that the letter states the grandchildren moved out of the home five months earlier, and therefore it is not a letter reciting contemporaneous circumstances. It is a historical recitation, a report about something that happened in the past, and I regard Respondent's applications to be the more reliable documents because they contained contemporaneous and not historical information.

I believe the letter was created for some entirely different purpose relating to the grandchildren's education, medical care, custody, the daughter's taxes, the daughter's DHS benefits, or even all of these purposes. Accordingly, I find that DHS has failed to establish the first element of the IPV, and DHS' request for a finding of IPV of FIP and FAP is DENIED.

In regard to the question of overissuance, I find that DHS has failed to establish that Respondent was ineligible for the FIP and FAP benefits she received. I find that DHS has failed to establish when the alleged overissuance occurred, because DHS has failed to establish when, if ever, Respondent's grandchildren left her home. On the record before me, while I can determine that her grandchildren lived with her in October 2005, I have no way of determining when, if ever, the grandchildren went to live elsewhere. Accordingly, it is ORDERED that DHS has not established overissuance in this case and is not entitled to recoup monies from Respondent.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides and concludes that DHS' request for IPV findings for FIP and FAP are DENIED, and DHS' request for a finding that an overissuance occurred, is DENIED. DHS shall take no further action in this case.



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

Date Signed: November 8, 2010

Date Mailed: November 9, 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:

