

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2010-52063
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: May 4, 2011
DHS County: Saginaw

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 May 4, 2011. [REDACTED], appeared and testified on behalf of DHS. Respondent [REDACTED] appeared and testified. [REDACTED] appeared and testified as a witness for Respondent.

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 3, 2008, Respondent signed an Application for FAP benefits. Her signature appears under this printed statement:

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....

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 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.

2. Respondent's application states that she, her husband, [REDACTED], and her daughter, [REDACTED], are unemployed.
3. On June 10, 2008, [REDACTED] became employed at [REDACTED].
4. After June 10, 2008, but before June 20, 2008, [REDACTED] went to DHS, picked up a Verification of Employment form, delivered it to his onsite coordinator at work, and was told that the Verification would have to be completed by the company's corporate headquarters.
5. Respondent believed that the company sent the Verification of Employment to DHS, because Respondent's FAP and Family Independence Program benefits changed at that time.
6. On December 10, 2008, [REDACTED] faxed a Verification of Employment to DHS, stating that Respondent's husband [REDACTED] was employed with them beginning June 15, 2008, he is paid \$7.40 per hour, and he works forty hours per week. As of December 10, 2008, he was an active employee.
7. On June 10, 2010, DHS sent Respondent an IPV Repayment Agreement and requested her signature. Respondent failed to sign the Repayment Agreement.
8. On March 31, 2011, DHS sent a Notice of Disqualification Hearing to Respondent notifying her of the May 4, 2011 Administrative Hearing.
9. The recoupment amount requested by DHS is \$1,321 received from August-December 2008, a period of five months.

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 FAP 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 and an Order permitting recoupment of benefits unlawfully received.

The applicable manual section in this case is Program Administrative Manual (PAM) 720, "Intentional Program Violation," which was adopted October 1, 2007, and was in effect June 3, 2008, the date Respondent applied for FAP benefits. PAM 720 is not available online. However, the definition of IPV is the same in both versions.

BAM 720 sets forth the definition of IPV in effect June 3, 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 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 (boldface in original).

In this case, I must apply BAM 720 to the facts to determine if all three of the elements of 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 element did not occur, I must find that the first element has not been met. Furthermore, BAM 720 requires that all three elements 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, before I can determine whether Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate, information when she applied, I must go to the second element, whether she had knowledge of her responsibility. I do this because if Respondent did not have knowledge of her responsibility, she is not capable of intentionally failing to perform it.

I have examined all of the evidence and testimony in this case as a whole. I find that Respondent signed the application beneath the Affidavit requiring her to report information. She also received an Information Booklet with the information that income changes were to be reported within ten days. I find this is clear and convincing evidence that she was informed of her responsibility.

Now, going back to the first element, I find and conclude that on June 10, 2008, Respondent's husband became employed but Respondent failed to report it to DHS. I find and decide that Claimant was in violation of her responsibility to report her husband's income. However, I find as fact that in this case, even though Respondent failed in her responsibility to report a change, she did not do so for the purpose of establishing, maintaining, increasing or reducing her benefits or eligibility.

Therefore, I find that the first element of IPV has not been met in this case. As all three IPV elements must be fulfilled, it is my ruling that this has not occurred and the Department's request for IPV in this case is denied.

In conclusion, based on the findings of fact and conclusions of law above, I find and decide that an IPV of the FAP program has not occurred. DHS' request for an Administrative Hearing decision of IPV of the FAP program is DENIED. As there is no IPV in this case, I further rule that no penalty shall be imposed on Respondent.

With regard to recoupment, DHS is entitled to an order permitting recoupment of the full amount of overissuance, \$1,321, as I find and determine that all of the requested money is proved to be overissued to Respondent.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, DENIES DHS' request for a finding of IPV of FAP. IT IS ORDERED that the

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Department's request for a finding of IPV is DENIED, and no IPV penalty shall be imposed on Respondent.

IT IS FURTHER ORDERED that DHS is entitled to recoup the FAP overissuance to Respondent of \$1,321. DHS shall proceed in accordance with all DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 9, 2011

Date Mailed: May 10, 2011

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:

