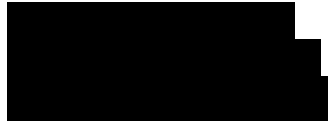


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201053769
Issue No: 3055
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 17, 2010
Marquette County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services (department) request for a disqualification hearing. After due notice, a telephone hearing was held on November 17, 2010. Respondent did not appear at the hearing and it was held in the respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Did the respondent intentionally withhold J.W. and C.W.'s earned income from the department?

FINDINGS OF FACT

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

1. Respondent was a FAP recipient during the period of February 2008 through January 2010.
2. Two members of Respondent's FAP group, [REDACTED] and [REDACTED], were receiving earned income from a land contract during the period of February 2008 through January 2010. C.W. was Respondent's Power of Attorney.
3. Respondent was not receiving earned income from the land contract.

4. The department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of benefits received by respondent as a result of respondent having committed an Intentional Program Violation (IPV); the OIG also requested that respondent be disqualified from receiving program benefits.
5. Respondent indicated on this application that his only income was RSDI social security benefits. (Department Exhibit 1, page 7).
6. The Office of Inspector General indicates that the time period they are considering the fraud period is February 1, 2008 through January 31, 2010. (Department Exhibit 1, pages 2-6).
7. On July 16, 2009, Respondent's caseworkers were notified by email by the caseworker at Children's Foster Home Licensing of a possible overissuance. The caseworker reported that she had been working with J.W. and C.W. on foster home licensing and they had informed her that they received approximately \$28,000.00 in earned income per year through a land contract on land they had sold. During a check on Bridges, the caseworker found that J.W. and C.W. were in Respondent's group and that they were receiving food stamps, and the earned income from the land contract was not budgeted. (Department Exhibit 1, Item 2, page 3).
8. Memorandum of Land Contract shows that on September 24, 2007, J.W. and C.W., sold property in the County of Arenac to R.S. and E.S. (Department Exhibit 1, Item 28, pages 139-140).
9. E.S. provided documentation showing payments in the amount of \$14,194.42 were paid each year to J.W. and C.W. on March 15th and September 15th beginning in 2008, with an initial down payment of \$40,000.00 in September 2007. (Department Exhibit 1, Item 29, page 143).
10. Checks from E.S. and R.S. in the amount of \$14,194.42 were received and cashed by J.W. on March 12, 2008, September 4, 2008, March 11, 2009, and September 12, 2009. (Department Exhibit 1, Item 30, pages 147-150).
11. During the alleged fraud period in which the Respondent was receiving FAP benefits, J.W. and C.W. were receiving earned income which was not reported to DHS. Respondent was issued \$7,261.00 in FAP benefits. (Department Exhibit 1, Item 33, pages 158-210).
12. Respondent's FAP group received an overissuance of \$7,261.00 for the FAP program because income from the land contract was not reported to the department in a timely manner. (Department Exhibit 1, pages 158-210).

13. Respondent had not committed any previous intentional program violations of the FAP program. (Department Hearing Request).

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) 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 (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the department has asked that the respondent be disqualified from receiving benefits. The department's manuals provide the following relevant policy statements and instructions for department caseworkers:

When a customer client group receives more benefits than they are entitled to receive, the department must attempt to recoup the overissuance. BAM 700. A suspected intentional program violation means an overissuance where:

- 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.

The department suspects an intentional program violation when the 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. BAM 720.

The department's Office of Inspector General processes intentional program hearings for overissuances referred to them for investigation. The Office of Inspector General represents the department during the hearing process. The Office of Inspector General requests intentional program hearings for cases when

- benefit overissuances are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and

- the total overissuance amount is \$1000 or more, or
- the total overissuance amount is less than \$1000, and
 - the group has a previous intentional program violation, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance,
 - the alleged fraud is committed by a state/government employee.

A court or hearing decision that finds a client committed an intentional program violation disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720.

Clients that commit an intentional program violation are disqualified for a standard disqualification period except when a court orders a different period. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720. This is the respondent's first intentional program violation.

In this case, there is no evidence that Respondent had knowledge of J.W. and C.W.'s earned income from the land contract. The land contract was signed on September 24, 2007, and Respondent was not a party to the contract. The checks of \$14,194.42 were made out solely to J.W. The department was asked why it was pursuing a case against Respondent when there was no evidence presented that Respondent had knowledge of the earned income. The department stated that since Respondent lived in the same household with J.W. and C.W. he had to have knowledge of their earned income. While living in the same household is evidence he knew of the income, it is not clear and convincing evidence that Respondent intentionally withheld information for the purpose of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility.

According to departmental policy, there must be clear and convincing evidence that Respondent intentionally withheld information from the department for the purpose of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility. This Administrative Law Judge finds no evidence of Respondent's knowledge of the earned income from this record or that Respondent intentionally failed to report earned income in order to receive more program benefits than he was entitled to receive.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides there was no IPV on behalf of Respondent and the department failed to establish

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Respondent committed an Intentional Program Violation. Therefore, the department's IPV action against Respondent cannot be upheld.

SO ORDERED.

/S/
Vicki L. Armstrong
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 1, 2010

Date Mailed: December 2, 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.

VLA/om

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