

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.: 2010-6702
Issue No.: 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: October 6, 2010
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) Sections 400.9 and 400.37 and a request for a hearing made by the Office of the Inspector General (OIG) of the Department of Human Services (DHS). After due notice, a telephone hearing was held on October 6, 2010. Respondent did not appear. [REDACTED], appeared and testified on behalf of DHS.

ISSUE

Whether 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 December 20, 2007, Respondent applied for FAP benefits for himself and his wife, Renee. He signed for and received a copy of the DHS Acknowledgments, DHS Form DHS-1171, which explains that changes of address and employment must be reported within ten days of the change.
2. On January 29, 2008, Respondent was awarded \$298 per month FAP benefits for a family of two beginning February 1, 2008. Respondent also received \$75 FAP benefits for January, 2008.
3. On March 3, 2008, [REDACTED] began working as a [REDACTED] for [REDACTED], and continued working there through at least November, 2008.

4. On or about March 3, 2008, [REDACTED] left a telephone message with DHS informing DHS of her job, but the message was never received.
5. On or about July 1, 2008, Respondent moved to [REDACTED].
6. On or about July 1, 2008, [REDACTED] left a telephone message with DHS informing DHS that her husband moved, but the message was never received.
7. On October 1, 2008, Respondent's FAP benefits were increased to \$323 per month.
8. Respondent's FAP benefits ended on November 30, 2008.
9. On September 9, 2009, DHS sent Intentional Program Violation Repayment Agreements and Disqualification Consent Agreements, Forms DHS-4350 and DHS-830, to Respondent's address. Respondent failed to sign and return the documents.
10. On January 15, May 3 and August 27, 2010, DHS issued Notices of Disqualification Hearing/Request for Waiver of Disqualification Hearing, Form DHS-827, and sent them to Respondent with accompanying documentation.
11. This is the first IPV allegation against Respondent.

CONCLUSIONS OF LAW

FAP was established by the 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 Section 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-.3015. DHS' current FAP policies and procedures are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT), which are online at www.mich.gov/dhs-manuals.

DHS alleges that, from May 1, 2008-November 30, 2008, a period of seven months, Respondent committed an IPV in that he intentionally failed to report his wife's employment and also that he intentionally failed to report a change of address. DHS alleges Respondent unlawfully received FAP benefits of \$2,063. DHS requests a finding of a FAP IPV and, in the event that the Administrative Law Judge makes this finding, DHS asks that Respondent be disqualified from receiving benefits for an IPV first-time offense.

I turn now to the question: is there clear and convincing evidence to prove that Respondent committed an IPV according to law? In this case, the applicable law is to be found in the DHS policies and procedures in effect at the relevant time period.

The first DHS manual section that is applicable in this case is Program Administrative Manual (PAM) Item 720, "Intentional Program Violation," which became effective October 1, 2007. This policy was in effect on March 3, 2008, when Renee Kelly started working.

PAM 720 is not available online, but it is similar to the current version, BAM 720, "Intentional Program Violation," which can be found online at www.michigan.gov/dhs-manuals.

I quote here from PAM 720, which was in effect on March 3, 2008:

Suspected IPV

Suspected IPV means an OI 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. PAM 720, effective October 1, 2007, p. 1. (Bold print in original.)

I have examined all of the documents and testimony presented in this case. I begin by looking at the first of the three requirements, or elements, of IPV as stated in the policy. This first requirement is that, during the hearing, DHS must prove Respondent's intent by clear and convincing evidence. I must, therefore, determine first whether

Respondent intentionally failed to disclose information which, in this case, would be the employment of a household member. If I determine that Respondent did not intentionally fail to disclose the employment of a household member, then I must deny DHS' request for an IPV finding.

Based on my findings of fact above and all of the testimony and evidence in this case, I find and conclude that Respondent did not conceal information from DHS and, indeed, Respondent's wife, [REDACTED], phoned DHS to tell them of her new job and her husband's change of address. I accept the credible and un rebutted written statement of Respondent that [REDACTED] called and left messages. I also accept the credible and un rebutted written statement of the DHS worker who indicated she did not receive the messages. I believe these two pieces of information are consistent with each other, as it is reasonable to consider that sometimes messages are left but are not properly received. I have no reason to disbelieve either Respondent or the DHS worker's written statements, and I find and conclude that Respondent did not fail to disclose information in this case.

As I have found that Respondent did not fail to disclose information to DHS, I cannot find a reason for an action that never occurred. Accordingly, I find that I do not reach the question of intent in this case, because the alleged action, i.e., intentional concealment, did not occur in the first place. DHS, therefore, has failed to establish the first element of IPV, intent, and DHS' request for a finding of IPV is DENIED.

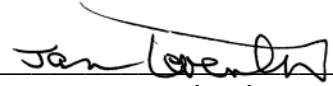
As there can be no IPV in this case, it is not necessary for me to address the second and third elements of IPV, and I turn next to the question of recoupment. I do find and conclude there is clear and convincing evidence to prove that Respondent received an overissuance of FAP benefits. I conclude DHS has established that an overissuance of FAP benefits occurred and I ORDER that DHS is entitled to recoup it.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that DHS failed to establish by clear and convincing evidence that a FAP IPV occurred. DHS' request for a finding of IPV is DENIED.

2010-6702/JL

The Administrative Law Judge finds DHS has established that Respondent received an overissuance of FAP benefits. It is herein ORDERED that DHS is entitled to recoup the overissuance of \$2,063 FAP benefits.



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

Date Signed: October 7, 2010

Date Mailed: October 7, 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:

