

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Respondent

Reg. No.: 2010-8586
Issue No.: 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 19, 2010
Wayne County DHS (57)

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 conducted from Detroit, Michigan, on May 19, 2010. Respondent did not appear. [REDACTED]

[REDACTED], appeared and testified on behalf of DHS.

ISSUE

Did Respondent commit 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. Respondent was a FAP recipient from June, 2001 to February, 2007.

2. On February 23, 2006, Respondent completed and signed an application for FAP without acknowledging his income.
3. Respondent was working and received earned income, at least as of April-June, 2003, while he was receiving FAP benefits.
4. Respondent failed to report his earned income to DHS in a timely manner.
5. Due to Respondent's failure to report his earned income, he received a \$1,216 FAP overissuance from March-September, 2006.
6. On October 7, 2009, DHS requested repayment of \$3,372 from Respondent. Respondent failed to sign the DHS Repayment Agreement.
7. This is Respondent's first Intentional Program Violation.

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 (CFR). DHS administers FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-3015. DHS' FAP policies and procedures are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT), which are online at www.mich.gov.

In this case, DHS has requested a finding of an Intentional Program Violation and that the one-year disqualification penalty be applied to Respondent as this is his first IPV.

The applicable manual section in this case is BAM 720, "Intentional Program Violation," which was updated on May 1, 2010, and is seventeen pages long. The definition of an 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.

I conclude that DHS has provided no evidence to the Administrative Law Judge to establish that, before February 23, 2006, Respondent ‘intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination,’ nor is there evidence to establish that Respondent was “clearly and correctly instructed regarding his or her reporting responsibilities,” as required by BAM 720. I find that DHS’ conclusory statement that Respondent applied for FAP benefits on March 31, 2003, is not substantiated by evidence in the record. Without such evidence, I do not know what income information Respondent provided to DHS and what instructions DHS gave him with regard to his reporting responsibilities.

I further conclude that, as of February 23, 2006, but not before, there is clear and convincing evidence to establish that Respondent committed an FAP Intentional Program Violation. Although Respondent was aware of his reporting responsibilities, he intentionally failed to report his earned income to DHS on that date. This information was necessary in order to determine his eligibility for program benefits. There is no evidence in the record of any justifiable excuse for Respondent’s failure to report his income.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Respondent committed his first FAP Intentional Program Violation. Accordingly, the Administrative Law Judge ORDERS that:

1. Respondent is personally ineligible to participate in FAP for twelve months. This disqualification period shall be applied immediately.

2. Respondent shall be required to reimburse DHS for FAP benefits which he received in violation of the income reporting requirements of DHS policies and procedures, in the amount of \$1,216.



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

Date Signed: May 26, 2010

Date Mailed: May 26, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JL/pf

cc:

