

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.: 2010-8589
Issue No.: 3055
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 4, 2010
Oakland County DHS (04)

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 the Department of Human Services' (DHS) request for a hearing. After due notice, a telephone hearing was held on August 4, 2010. Respondent appeared and testified. [REDACTED], DHS, 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. DHS' OIG filed a hearing request to establish that Respondent committed an IPV, causing an overissuance of FAP benefits to Respondent. The OIG also requested that Respondent be disqualified from receiving FAP benefits as a first-time violator.
2. In May, 2008, Respondent applied for FAP benefits. He informed the DHS case specialist that he lived six months of the year in Michigan and six months in Florida and asked if he was eligible. She checked with her supervisor and, afterwards, advised Respondent that he was eligible for Michigan FAP benefits and could continue to use the Michigan FAP card in the State of Florida.
3. Respondent did not know of any further reporting responsibility.

4. In May, 2009, when Respondent returned to Michigan after living six months in Florida, he learned that he was given the wrong information by the DHS case specialist.
5. As a result, Respondent received an overissuance of FAP benefits in the amount of \$1,080.
6. Respondent had no intent to obtain FAP benefits illegally.
7. In December, 2009, Respondent knew what to do, and he accordingly canceled his Michigan FAP card and obtained an appropriate card in the State of Florida.
8. A Notice of Disqualification Hearing was mailed to Respondent at his last known address.
9. DHS has not established that Respondent committed an IPV.

CONCLUSIONS OF LAW

FAP was established by the Food Stamp Act of 1977, as amended, and is implemented by Federal regulations contained in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3001-3015. DHS 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.mich.gov/dhs-manuals.

DHS alleges that, from December, 2008, through April 30, 2009, a period of six months, Respondent committed an IPV in that he intentionally failed to report a change of residence outside of the State of Michigan.

DHS alleges Respondent unlawfully received FAP benefits of \$1,080. 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 as an IPV first-time violator.

I shall consider whether there is clear and convincing evidence in this record to prove that Respondent committed an IPV according to the 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 DHS manual section that is applicable in this case is BAM Item 720, "Intentional Program Violation," effective August 1, 2008. This version was in effect on December

1, 2008. It is similar to the current version of BAM 720, "Intentional Program Violation," which can be found online at www.mich.gov/dhs-manuals.

I quote the language of BAM 720 in effect December 1, 2008:

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, effective August 1, 2008, p. 1. (Bold print in original.)

I have examined all of the documents and testimony presented in this case. There are three elements in an IPV, and DHS must establish all three of them.

The first element is intentionally failing to report information, or reporting incomplete or inaccurate information. Based on my findings of fact above, I conclude that Respondent did not fail to report information, nor did he report incomplete or inaccurate information, to DHS. When he applied for benefits, he truthfully told DHS that he lived in Michigan six months and Florida six months and asked DHS if he was eligible.

The first requirement of IPV also specifies that the information that is not provided has to be information "needed to make a correct benefit determination." In other words, information that is secondary to the calculation of benefits is not included in this requirement. I conclude that, once Respondent was told his benefits would continue while he was in Florida, he was entitled to believe that further reports about his move to Florida were unnecessary, because such information would not be needed to make a correct benefit calculation.

Accordingly I conclude that the first element of the IPV has not been proven by clear and convincing evidence. As all three elements of the IPV must be established, at this juncture DHS has failed to establish that an IPV occurred in this case.

Nonetheless, I will further discuss the second element of an IPV, i.e., whether Respondent was clearly and correctly instructed as to his reporting responsibilities. DHS alleges that he was so advised based on the fact that he was given an Information Booklet at the time he applied.

I have reviewed the Information Booklet which was submitted in evidence in this case, in particular, the section entitled "Things You Must Do." I have also considered Respondent's testimony that he did not read the Booklet and did not know of his responsibility. However, when I consider the Information Booklet in conjunction with DHS' verbal advice to Respondent, I conclude that, even if he read the Booklet, he would have thought that he could go ahead and use his Michigan card in Florida lawfully without further reports to DHS. I reach this conclusion because the Information Booklet does not state that such usage is not permitted. I conclude that the language of the Booklet does not cause doubt regarding the initial advice DHS gave to Respondent. While Respondent may have failed to report his change of address ten days after it happened, I conclude he was following incorrect advice from DHS.

Based on Respondent's credible and un rebutted testimony, I have found as fact that Respondent was instructed that he could use his Michigan FAP card in Florida. I think it was reasonable for Respondent to conclude from this advice that his move to Florida was *not* a change in his FAP eligibility status. I conclude that Respondent's omission in not reporting his move a second time was not based on clear and correct instructions as to his reporting responsibilities. This omission is not equal to an intentional concealment on his part. I conclude that the first and second elements of an IPV have not been proven in this case.

Regarding the third element of an IPV, based on all of the evidence in this case as a whole, I conclude that Respondent has no apparent physical or mental impairments that limit his understanding or ability to fulfill his reporting responsibilities. I conclude that the third element of the IPV has been proven by clear and convincing evidence.

DECISION AND ORDER

The Administrative Law Judge, based on 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 is DENIED.

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DHS has established that Respondent received an overissuance of FAP benefits in the amount of \$1,080. DHS is entitled to recoup it.



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

Date Signed: August 9, 2010

Date Mailed: August 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:

