

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.: 2010-8603
Issue No.: 1052, 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 Intentional Program Violations (IPV) of the Food Assistance Program (FAP) and the Family Independence Program (FIP)?

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 November 20, 2006, Respondent completed and signed an application for FAP and FIP benefits, indicating he had no income.

2. Respondent received FAP and FIP benefits from February-May, 2007.
3. Respondent was working and received earned income from January 8-May 10, 2007, while receiving FAP and FIP benefits.
4. Respondent did not report the earned income to DHS.
5. Respondent received \$966 FAP and \$1,424 FIP benefits for February-May, 2007, totaling \$2,390.
6. On October 6, 2009, DHS requested repayment of \$2,390 from Respondent. Respondent did not sign the DHS Repayment Agreement.
7. This is Respondent's first alleged IPV.

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/dhs-manuals.

FIP was established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 United States Code Sec. 601 *et seq.* DHS administers FIP pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3101-3131. DHS' FIP policies are also found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). www.mich.gov/dhs-manuals.

In this case, DHS has requested a finding of IPV, 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. (Emphasis added.).

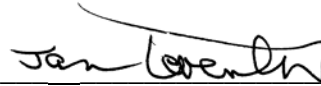
DHS provided no evidence to the Administrative Law Judge to establish that Respondent "intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination." Further, DHS provided no evidence to establish that Respondent was "clearly and correctly instructed regarding his or her reporting responsibilities," as required by BAM 720. The application form contains no such language, and no additional documents or testimony were provided to establish that clear and correct instructions were given to Respondent.

I find that DHS' statements are conclusory. I conclude there is no evidence in the record that the element of intent has been established in this case, and DHS has failed to prove that Respondent was "clearly and correctly instructed." I determine that I cannot infer from Respondent's failure to report the new income, that he was clearly and correctly instructed that

he had a responsibility to do so. I determine that I cannot infer from Respondent's signature on an application form that he was given clear and correct instructions about his responsibilities.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Respondent did not commit FAP or FIP Intentional Program Violations. Accordingly, the Administrative Law Judge ORDERS that DHS' request for findings of Intentional Program Violations of the FAP and FIP programs is DENIED.



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

Date Signed: June 1, 2010

Date Mailed: June 3, 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:

