

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.: 2010-8606
Issue Nos.: 3055, 6052
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. The Notice of Disqualification Hearing sent to Respondent was returned to the State Office of Administrative Hearings and Rules (SOAHR) on April 28, 2010.

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

[REDACTED], appeared and testified for DHS.

ISSUES

1. Did Respondent intentionally report only one job to DHS while he was employed at two jobs, thereby committing an Intentional Program Violation (IPV) of the Food Assistance Program (FAP) ?
2. Does SOAHR have jurisdiction to conduct a Disqualification Hearing in a Child Development and Care (CDC) matter, when there was no notice to Respondent?

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 February 14, 2005, Respondent completed an application for FAP benefits, stating he was employed. The employer's name was not given. Respondent's date of hire was September 23, 2004, he worked forty (40) hours per week, and his February 10, 2005, paycheck was \$186. His rate of pay is shown as "68250" per hour.
2. On August 5, 2005, Respondent signed the application a second time.
3. On January 25, 2006, Respondent completed an application for FAP and CDC benefits. With regard to earned income, the application does not state the name of the person employed, and states that the employment is with "[REDACTED]." The employed person began work at [REDACTED] on September 23, 2004, and worked forty (40) hours per week. The January 20, 2006, paycheck was \$378.26, and the rate of pay was \$6.50 per hour.
4. On August 1, 2006, [REDACTED] submitted a Verification of Employment Form DHS-38 stating that Respondent was a security guard at the company, he was hired June 25, 2005, and his most recent paycheck was dated July 28, 2006. The statement indicated that Respondent's wages were \$6.50 per hour and he worked sixty (60) hours per week. The statement further indicates that Respondent's employment was permanent.
5. Respondent received FAP benefits from December, 2003, through September, 2006.

6. Respondent received CDC benefits for his niece, [REDACTED], and his niece, [REDACTED], from August 7, 2005-July 22, 2006.
7. On October 7, 2009, DHS sent Respondent an Intentional Program Violation Repayment Agreement and a Disqualification Consent Agreement, DHS Forms 4350 and 830. Respondent did not sign the documents.
8. On April 12, 2010, DHS issued a Notice of Disqualification Hearing/ Request for Waiver of Disqualification Hearing, Form DHS-827, and sent it to Respondent with accompanying documentation.
9. On April 28, 2010, the U.S. Postal Service returned the materials to the State Office of Administrative Hearings & Rules (SOAHR), marked “Attempted – not known.”
10. This is the first allegation of IPV 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 (CFR). DHS administers FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules (MACR) 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.

CDC is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of CFR, Parts 98 and 99. DHS provides CDC services to adults and children pursuant to MCL Section 400.14(1) and

MACR 400.5001-5015. DHS' CDC policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). www.mich.gov.

DHS requests a finding of an Intentional Program Violation and, in the event that the Administrative Law Judge makes that finding, DHS asks that the Respondent be disqualified from receiving benefits for a first IPV offense.

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. IPV is defined 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 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 have examined all of the documents and the testimony presented in this case. I determine that the information on the two DHS applications is incomplete and does not clearly identify Respondent's employment status. On the first application, there is no employer named, on the second application, there is no person named, and, also on the second application, the employer is not fully identified. These documents are incomplete, and I believe that [REDACTED] could be a temporary staffing company, i.e., a "rent-a-cop" company, that placed Respondent at a job with the alleged second employer, [REDACTED]. There is nothing in the record to show that DHS inquired into [REDACTED] identity and business purpose.

I conclude that what appear to be two jobs may, in fact, be one and the same job and, based on all of the evidence in this case taken as a whole, I decline to find that Respondent failed to report earned income. Another item of evidence that I consider important to my finding is that the rate of pay is exactly the same at both jobs. This fact causes me to infer that there may in fact be a sharing of employees between the two companies. Also, I believe it is unlikely, although possible, that Respondent was working two forty-hour jobs at the same time. I think it is more likely that he had insufficient information about the true name of his employer.

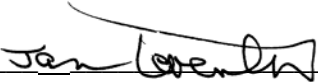
I conclude that there is insufficient evidence to establish that Respondent committed an FAP IPV. I determine that, without further information about the unnamed employer on the first application and the business of the Wolverine company on the second application, there is no clear and convincing evidence that Respondent intentionally failed to report earned income.

Next, with regard to the charge of IPV of the CDC program, as the Notice of Disqualification Hearing was returned as undeliverable to SOAHR, I have no jurisdiction to conduct a hearing on this issue. MACR 400.3130(5) states that a disqualification hearing in the absence of notice to Respondent is not authorized. MACR 400.3130(5). Accordingly, this issue must be DISMISSED.

DECISION AND ORDER

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

Second, with regard to DHS' allegation of a CDC IPV, because there was no notice to Respondent, I have no jurisdiction over this issue, and it also is DISMISSED.



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:

