

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-5605
Issue No.: 1052
Case No.: [REDACTED]
Hearing Date: May 4, 2011
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 presented by the Department of Human Services' (DHS) Office of the Inspector General (OIG). After due notice, a telephone hearing was held on May 4, 2011. Respondent did not appear. [REDACTED], appeared and testified on behalf of DHS.

ISSUE

Whether there is clear and convincing evidence to establish that Respondent committed an Intentional Program Violation (IPV) of 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 14, 2006, Respondent signed an application for FIP benefits for himself and his son, [REDACTED]. Respondent lived on [REDACTED].
2. Also on November 14, 2006, Respondent received a DHS Acknowledgments booklet, which states he must report changes in his situation within ten days of the change.
3. Respondent began receiving FIP benefits.
4. On July 17, 2008, Respondent applied for FIP benefits for himself and his son. Respondent lived on [REDACTED].

5. From September 2, 2008-June 10, 2009, [REDACTED] was a registered student at [REDACTED].
6. On September 25, 2008, DHS received a faxed Verification of Student Information, DHS Form 3350, from [REDACTED]. Box 2 on the form indicates that the person with whom the student is residing is [REDACTED]. Box 3 of the form indicates that [REDACTED] is the student's grandfather.
7. On November 1, 2010, DHS sent Respondent an Intentional Program Violation Repayment Agreement and a Disqualification Consent Agreement, requesting his signature. Respondent did not sign and return the documents.
8. On March 31, 2011, DHS sent Respondent a Notice of Disqualification Hearing with accompanying documentation.
9. This is the first FIP IPV allegation against Respondent.
10. DHS seeks a recoupment order for \$5,213, which is the amount of the FIP overissuance (OI) DHS alleges Respondent received from September 1, 2007-September 30, 2008, a period of thirteen months.

CONCLUSIONS OF LAW

FIP was established by the U.S. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 United States Code 601 *et seq.* DHS administers FIP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules (MACR) 400.3101-400.3131. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

DHS alleges that from September 1, 2007 through September 1, 2008, a period of thirteen months, Respondent committed an IPV in that he received FIP benefits from September 2007-September 2008 to which he was not entitled. DHS alleges Respondent unlawfully received FIP benefits of \$5,213. DHS requests a finding of FIP IPV and, in the event that the Administrative Law Judge makes these findings, DHS asks that Respondent be disqualified from receiving FIP benefits for an IPV first-time offense. DHS also requests an Order granting it authority to recoup the FIP OI from Respondent.

The question before me is whether there is clear and convincing evidence to prove that Respondent committed the alleged IPV according to law. In this case, the applicable law is found in DHS policies and procedures.

BAM 720, "Intentional Program Violation," sets forth the definition of IPV. The definition of IPV in BAM 720 has not changed since at least 2007, when the incidents in this case occurred.

I quote BAM 720:

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.

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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. (Boldface in original.)

Using the BAM 720 elements, I must first determine if Respondent failed to report information to DHS. As DHS alleges that the first date of IPV is September 1, 2007, I look first to see if DHS has proved that Claimant failed to report information on or before that date. If DHS cannot prove that he did so, DHS cannot prove the first IPV element and the requirements of BAM 720 cannot be fulfilled.

I have examined all of the documents and testimony presented in this case. Here is the evidence in the record from November 14, 2006 to September 1, 2007. These dates indicate the period from when Respondent first applied to the date the violation allegedly began. There are five pieces of evidence in the record concerning this time period.

The first piece of evidence is the November 14, 2006, application. The second item of evidence is Respondent's July 17, 2008, application form. The third is the September 25, 2008, Verification of Student Information form. The fourth item of evidence is the

June 10, 2010, interview notes of OIG [REDACTED] of an interview with Respondent held on October 19, 2009. The fifth piece of evidence is the report of OIG [REDACTED] June 29, 2010, telephone conversation with [REDACTED] Respondent's mother. Department Exhibit 1, pp. 12, 20-43, 45, 58.

With regard to my analysis of this evidence, I have reviewed all of the evidence and testimony in this case as a whole. Looking first at Respondent's 2006 application, I find nothing to indicate that he failed to report information or that he reported incomplete or inaccurate information on this application.

Second, looking at Respondent's second application in July 2008, this application states that Respondent's son lives with him on [REDACTED]. Now, if this statement is inaccurate and Respondent's son does not live with him, then Respondent has failed to report accurate information. DHS asserts there is clear and convincing evidence in the record that establishes that Respondent's son did not live with him on [REDACTED] on July 17, 2008. There are three remaining items of evidence in the record, and they must be examined as to this point.

The three remaining items of evidence are the school form and two investigative reports of DHS [REDACTED]. I do not consider the information on the school verification form to be reliable for several reasons. First, DHS typed the name "[REDACTED]" in both the case name and the student name boxes at the top of the form DHS sent to the school. I consider it very possible that because the student's name, [REDACTED], was not on the form, the counselor put incorrect information about the family on this form. My second concern about the relevance of this document is that it is dated September 25, 2008, and does not contain any information about the family's residence from September 1, 2007-September 25, 2008. As [REDACTED] was in eighth grade in 2007-2008, the high school is not in a position to attest to his whereabouts during the previous year. Third, I do not consider a school verification form to be a reliable document in regard to a person's residence because the person reporting the information has no first-hand knowledge of the information she is reporting about. For all of these reasons, I do not consider this third item of evidence to be reliable or to provide relevant information as to the question whether Respondent gave inaccurate information on his July 17, 2008, application.

Next, I consider the interviews conducted by DHS of Respondent and Respondent's mother. The DHS notes of the interview with Respondent state:

On 10/19/2009 subject was interviewed at Saginaw Co DHS. Subject was advised of the allegations and presented with the evidence in this case. Subject stated that his son elected to return to his grandfather's home when he was preparing to move to a different address. Subject

denied that he was overissued any benefits and was not willing to sign a repay agreement. *Id.*, p. 12.

With regard to this interview, my concerns are as follows. First, I do not see that the Respondent's statements at the interview are connected in time with the alleged period of overissuance (September 2007-September 2008). Indeed, the report of Respondent's statement is vague and makes no reference to dates or times. I find this information is unclear and therefore not particularly useful in deciding this case. Second, I am considering a 2007-2008 OI, and this is an interview in 2009. I find the passage of time, where a person is being interviewed in 2009 about events in 2007 and 2008, leaves room for memory loss and inaccuracy to occur. Therefore, I consider that even if DHS reported Respondent's statements completely and accurately, Respondent himself could be mistaken about who lived where, and when. Third, I note that this is a report made in 2010, eight months after the interview took place, and I conclude that the interviewer had no independent recollection of the interview and merely copied part or all of his interview notes into the OIG report to the Prosecutor. Here too there is room for inaccuracy and incompleteness. For all of these reasons, I do not consider the Agent's report in the record to be competent and reliable evidence.

I look last at the fifth piece of evidence in the record, which is the DHS Agent's report of his telephone conversation with the Respondent's mother. This report appears to be the notes of a phone conversation that took place on June 29, 2010. My first concern here as to the reliability and usefulness of this document is that the witness is recollecting events that took place three to four years ago. As she did not testify at the Administrative Hearing in this case, I have no way of confirming the accuracy of her statement and I have no way to evaluate her credibility as a witness and her ability as a historian. I find that the three-year and four-year intervals between the events she recounts and the phone call with the DHS Agent is a lengthy period of time in which dates and events may not be remembered as accurately as they would have been at a more contemporaneous point. For all of these reasons, I decline to rely on Respondent's mother's testimony to establish that Respondent gave inaccurate information to DHS on the July 17, 2008, application.

Having reviewed all of the evidence and testimony in this case as a whole, I find that there is no clear and convincing evidence in the record to establish that Respondent gave inaccurate information to DHS. Accordingly, I find and conclude that DHS has failed to establish the first element of IPV and, as a result, DHS failed to establish that an IPV occurred in this matter.

In conclusion, based on the findings of fact and conclusions of law above, I find and determine that DHS has not proved by clear and convincing evidence that Claimant committed an IPV in this case. DHS' request for a finding of FIP IPV is DENIED. As I have decided that Respondent did not commit a FIP IPV, I conclude and decide that he

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was entitled to FIP benefits from DHS, and DHS' request for a recoupment order is, therefore, DENIED.

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 FIP IPV occurred in this case. DHS' request for a finding of FIP IPV is DENIED. As I have found there is no IPV, I DENY DHS' recoupment request as well.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 9, 2011

Date Mailed: May 10, 2011

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:

