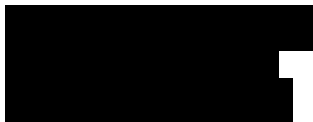


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No. 2011-2290
Issue No. 3055
Case No. [REDACTED]
Hearing Date: June 29, 2011
Macomb (20)

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 held on June 29, 2011. The Respondent did not appear. [REDACTED] Agent, DHS Office of the Inspector General, appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether there is clear and convincing evidence to establish that 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. On April 12, 2006, Respondent signed an Application for FAP benefits. Her signature appears under this printed statement:

IMPORTANT: YOU MUST SIGN THE APPLICATION
I certify that I have received and reviewed a copy of the Acknowledgments, that explains additional information about applying for and receiving assistance benefits.
(Boldface in original.)

2. Effective April 12, 2006, DHS provided FAP benefits to Respondent on an ongoing basis.

3. On March 20, 2007, Respondent became employed at [REDACTED] a fulltime, permanent job, paying \$9.41 per hour with a varying number of hours per week. As of April 30, 2008, Respondent was still employed at [REDACTED]
4. Respondent failed to report her employment at [REDACTED] to DHS.
5. On June 21, 2010 DHS sent Respondent an IPV Repayment Agreement and requested her signature. Respondent failed to sign the Repayment Agreement.
6. On May 23, 2011 DHS sent a Notice of Disqualification Hearing to Respondent, notifying her of the June 29, 2011 Administrative Hearing.
7. The recoupment amount requested by DHS is \$3,313, which is the amount Respondent received from June 1, 2007- April 30, 2008, a period of eleven months.
8. DHS requests the penalty for a first-time FAP Intentional Program Violation (IPV) in this case.

CONCLUSIONS OF LAW

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations found in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-400.3015. DHS' FAP policies and procedures are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

In this case DHS has requested a finding of IPV of the FAP program and, in the event that the Administrative Law Judge makes this decision, DHS asks that Respondent be disqualified from receiving benefits. DHS requests the penalty for a FAP first-time offense in this case, and an Order permitting recoupment of \$3,313 FAP benefits unlawfully received.

The applicable manual section in this case is BAM 720, "Intentional Program Violation." BAM 720 sets forth the definition of IPV on page 1:

**INTENTIONAL PROGRAM VIOLATION
DEFINITIONS
All Programs
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, p. 1 (boldface in original).

This is the same IPV definition that was in effect in 2007 and 2008, when the events of this case occurred. In this case I must apply BAM 720 to the facts to determine if all three of the elements of IPV have been met. I begin with the first element, which requires that the client must have intentionally failed to report information or intentionally given incomplete or inaccurate information needed to make a correct benefit determination. If I determine that any piece of the first element did not occur, I must find that the first element has not been met. Furthermore, BAM 720 requires that all three elements be met. So if the first, or any other, element is not met, then I must find that DHS has failed to prove IPV by clear and convincing evidence and DHS' request must be denied.

With regard to the first element, before I can determine whether Respondent intentionally failed to report information, or intentionally gave incomplete or inaccurate information when she applied, I must go to the second element, whether she had knowledge of her responsibility. I do this because if Respondent did not have knowledge of her responsibility, she is not capable of intentionally failing to perform it.

I have examined all of the evidence and testimony in this case as a whole. I find that Respondent received an information booklet with the information that income changes were to be reported within ten days. I find this is clear and convincing evidence that she was informed of her responsibility. I find that DHS has established the second IPV element, that Respondent was clearly and correctly instructed about her reporting responsibilities.

Now, going back to the first element, I find and conclude that on March 20, 2007, Respondent was hired at a new job, but she intentionally failed to report it to DHS. I find and decide that Respondent was in violation of her responsibility to report her change of employment.

To summarize my findings up to this point, I find that DHS has presented clear and convincing evidence to establish that the first two elements of IPV are met. I now turn to the third element, mental or physical impairment, to see if DHS has established this element as well. Again, having reviewed all of the testimony and evidence in this case as a whole, I find nothing in the record to indicate that Respondent has a mental or physical impairment that limited her understanding or ability to fulfill her reporting responsibilities. Therefore I find and conclude that the third IPV element has also been satisfied by DHS by clear and convincing evidence.

In conclusion, based on the findings of fact and conclusions of law above, I find and decide that all three of the elements of IPV have been established by clear and convincing evidence, and an IPV of the FAP program occurred in this case. DHS' request for an Administrative Hearing decision of IPV of the FAP program is GRANTED.

I next turn to the penalty DHS has requested in this case, which is a first-time penalty for IPV. I find that the record does establish that a first-time penalty is appropriate, as there is no allegation that Respondent committed previous IPV's.

Also, DHS is entitled to an order permitting recoupment of the full amount of overissuance, \$3,313, as I find and determine that DHS has proved this amount was overissued to Claimant.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, GRANTS DHS' request for a finding of IPV of FAP. IT IS ORDERED that the penalty for the FAP IPV shall be the penalty for a first-time offense.

IT IS FURTHER ORDERED that DHS is entitled to recoup the FAP overissuance to Respondent of \$3,313. DHS shall proceed in accordance with all DHS policies and procedures.



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

Date Signed: June 30, 2011

Date Mailed: June 30, 2011

2011-2290/JL

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 lives.

JL/cl

cc:

