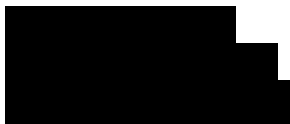


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No. 2011-8194
Issue Nos. 3055, 4052
Case No. [REDACTED]
Hearing Date: June 29, 2011
Wayne (17)

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 Office of the Inspector General's (DHS OIG) request for a hearing. After due notice, a telephone hearing was held on June 29, 2011. [REDACTED] Lead Agent, appeared and testified on behalf of DHS. The Respondent did not appear.

ISSUES

Whether there is clear and convincing evidence to establish that Respondent committed Intentional Program Violations (IPV) of the Food Assistance Program (FAP) and the State Disability Assistance (SDA) Program?

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 September 7, 2005, Respondent signed an application for cash assistance, FAP and medical benefits for a family group of five people. His signature appears below the following 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. Respondent listed [REDACTED] [REDACTED] both grandchildren of Respondent, as members of his family group.
3. On March 2, 2006, Respondent signed an Application for cash, FAP and medical benefits for a family of five. His signature appears below the same printed statement as on the September 7, 2005 application.
4. On August 14, 2006, Respondent signed a DHS application for State Emergency Relief for a family of five.
5. From February 1, 2007 to October 31, 2008, [REDACTED] [REDACTED] received food assistance benefits in the State of [REDACTED], claiming both children in her family group.
6. On July 16, 2007, Respondent signed an application for FAP and medical assistance for a family of five. His signature appears below the same printed statement as on the September 7, 2005 application.
7. On December 19, 2007, Respondent signed a DHS Semi-Annual Contact Report, indicating that his family group consisted of five people. His signature appears below the following printed statement:

I certify that the statements on this form are true and correct to the best of my knowledge. I understand that the information I provide on this form may result in a change or termination of my benefits.
(Boldface in original).
8. On November 16, 2009, DHS requested enrollment information from [REDACTED] Public Schools about [REDACTED] [REDACTED] Public Schools responded that the two children were enrolled in the [REDACTED] Public Schools in the [REDACTED] school year only.
9. On November 17, 2009, DHS requested enrollment information about [REDACTED] [REDACTED] Public Schools. [REDACTED] Public Schools responded that neither of the children was enrolled in the [REDACTED] Public School system.
10. On December 1, 2009, DHS sent Respondent an IPV Repayment Agreement and requested his signature. Respondent failed to sign the Repayment Agreement.
11. On May 23, 2011, DHS sent a Notice of Disqualification Hearing to Respondent, notifying him of the June 29, 2011 Administrative Hearing.

12. DHS requests an order permitting recoupment of \$4,943, which consists of \$3,484 FAP and \$1,459 SDA benefits that were overissued from September 1, 2006-February 1, 2008 (FAP) and September 1, 2006-August 31, 2007 (SDA).
13. DHS requests penalties for first-time FAP Intentional Program Violations (IPV) of FAP and SDA 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 (MACR) 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.

SDA provides financial assistance for disabled persons and is established by 2004 Michigan Public Acts (PA) 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.*, and MACR 400.3151-400.3180. Department policies are found in BAM, BEM and RFT. *Id.*

In this case, DHS alleges first that Respondent failed to report changes in his family group in September, 2006, and second, that on two subsequent applications in 2007 Claimant falsely reported that his family group consisted of five people when in fact it consisted of three people. DHS requests findings of IPV of the FAP and SDA programs and, in the event that the Administrative Law Judge makes these findings, DHS asks that Respondent be disqualified from receiving FAP and SDA benefits. DHS requests the disqualification penalty for FAP and SDA first-time offenses, and an Order permitting recoupment of \$1,459 FAP and \$3,484 SDA benefits unlawfully received.

The applicable DHS 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).

I must apply BAM 720 to the facts of this case 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 part 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.

In making my decision in this case I have reviewed all of the evidence and testimony as a whole. I find and determine the Respondent failed to report the changes in his family group in September, 2006, and further that Respondent reported inaccurate information on his July, 2007 application and his December, 2007 Semi-Annual Contact Report. I base these conclusions on the lack of enrollments for the two children in the [REDACTED] Public Schools System for the 2006-2007 school year, and on the [REDACTED] public assistance records showing the children in the mother's family group. Having found a failure to report changes, and that inaccurate information was provided twice, I now turn to the question of intent. There are actually two intent questions, first, whether Respondent intentionally failed to report changes (September, 2006), and second, whether Respondent intentionally reported false information (July and December, 2007).

Before I can determine whether Respondent intentionally failed to report changes, I must go to the second element, which is whether he had knowledge of his responsibility. I do this because if Respondent did not have knowledge of his responsibility, he 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 signed an Application in 2005, and received an Information Booklet with the information that changes were to be reported within ten days. I find this is clear and convincing evidence that he was informed of his responsibility. I find that DHS has established the second IPV element, that Respondent was clearly and correctly instructed about his reporting responsibilities.

I further find and determine Respondent was clearly and correctly instructed that he was required to tell the truth on the 2007 documents. I base this finding on the Respondent's signatures on these documents under certifications to that effect. I determine that his signature meant that he knew he had the responsibility to be truthful.

Now, returning to the first IPV element, I find and conclude that the requirements of this element are met. Respondent knew of his responsibility to be truthful and to report changes, he knowingly failed to perform these acts, and, the information was necessary to DHS in order to make correct benefit determinations. Those signatures, in the face of the [REDACTED] Public Schools information and the [REDACTED] public assistance records, indicate to me that the children were back with their mother in [REDACTED] and were enrolled in school there. I find and determine that these documents taken together provide clear and convincing evidence that Respondent no longer had care and custody of the two children, and that he knowingly provided false information to DHS.

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 his understanding or ability to be truthful and fulfill his 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 and SDA programs is GRANTED.

I next turn to the penalty DHS requested in this case, which is a first-time penalty for both IPV's. I find that the record does establish that first-time penalties are 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, \$4,943, as I find and determine that DHS has proved that this amount was overissued to Respondent.

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 and SDA. IT IS ORDERED that

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the penalty for the FAP and SDA IPVs shall be the penalties for a first-time offense in each program.

IT IS FURTHER ORDERED that DHS is entitled to recoup the FAP overissuance to Respondent of \$1,459 and the SDA overissuance of \$3,484, totaling \$4,943. DHS shall proceed in accordance with all DHS policy and procedure.



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

Date Signed: June 30, 2011

Date Mailed: June 30, 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 lives.

JL/cl

cc:

