

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 201321578
Issue No.: 1052, 2006, 3055
Case No.: [REDACTED]
Hearing Date: March 5, 2013
County: Eaton

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

ORDER OF DISMISAL

This matter is before the undersigned Administrative Law Judge for an Intentional Program Violation hearing pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request. After due notice, a hearing was conducted on March 5, 2013. Respondent appeared and testified along with her [REDACTED] and [REDACTED]

The specific issue that determined the outcome of this case is whether Respondent had any physical or mental impairment that limits her understanding or ability to fulfill her reporting responsibilities. The Department has a burden to present clear and convincing evidence on this element of an Intentional Program Violation (IPV). Department of Human Services Bridges Administration Manual (BAM) 720 Intentional Program Violations (2013) page 1:

**DEFINITIONS
All Programs**

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.

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.

Michigan Courts have described clear and convincing evidence to be:

Clear and convincing evidence is evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

The purpose of an Intentional Program Violation (IPV) hearing is not just to establish that an over-issuance of benefits occurred. An Intentional Program Violation (IPV) hearing has a higher standard of proof than a recoupment or debt establishment hearing because a Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC) or Food Assistance Program (FAP) IPV hearing results in punishment. BAM 720 pages 12 & 13. A person found to have committed one of these Intentional Program Violations (IPV) is sanctioned for a period of time during which they cannot receive benefits even if they meet all eligibility criteria and are eligible for assistance. The person is sanctioned because they committed a form of fraud to obtain assistance benefits they were not eligible for.

Credible testimony was presented during this hearing which indicates Respondent has mental impairments. There was no specific evidence present to indicate Respondent DID NOT have mental impairments. As a strictly evidentiary question, the evidence in this record does not constitute clear and convincing evidence that Respondent had no physical or mental impairment that limits her understanding or ability to fulfill her reporting responsibilities. Therefore, this proposed action by the Department cannot be upheld. The Department’s request for this hearing is dismissed.

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/s/

Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 5/10/13

Date Mailed: 5/13/13

201321578/GFH

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.

GFH/tb

cc:

