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

## IN THE MATTER OF:



Reg. No. Issue No. Case No. Hearing Date: 2010-46466 3055 June 29, 2011 Macomb (12)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

# HEARING DECISION

This matter is before the undersigned Admi nistrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and t he hearing request presented by the Department of Human Services (DHS) Office of the Inspector General (OIG). After due notice, a telephone hearing was held on J une 29, 2011. OIG Agent, appeared and testified on behalf of DHS. The Respondent did not appear.

## **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. From March 3, 2008-March 25, 2009, about one year, Respondent received food assistance benefits from the **Example 1**.
- 2. From March 3, 2008-March 25, 2009, Respondent made 17 8 purchas es in using his food assistance program benefits.
- 3. On May 14, 2008, Respondent applied for r FAP ben efits with DHS in Mic higan. Respondent's signature appears below the following printed statement:

W. AFFIDAVIT IMPORTANT: Before you sign this application, READ the affidavit.

- Under p enalties of p erjury, I swea r that this a pplication has been examined by or read to m e, and, to the best of my kno wledge, the facts are true and complete...
- I certify that I have received a co py, reviewed and ag ree with the sections in the assist ance appli cation **Information Bo oklet** explaining how to apply for and receive help: Programs, Things You Must Do, Important Things to Know, Repay Agreements, Information about Your Household That will Be Shared.
- I certify, under penalty of perjury, that all the information I have written on this form or told my DHS specialist or my representative is tr ue. I understand I can be prosecuted for perjury if I have intentionally given fall se or mi sleading information, misrep resented, hid den or withheld facts that may cause me to receive assistance I should not receive or more a ssistance t han I should receive. I can be prosecuted for fra ud a nd/or be required to re pay the amo unt wrongfully received. I u nderstand I may be a sked to show proof of any information I have given.
- 4. In Section A of the application, entitled "Address Information," Respondent stated he moved from, or received ass istance from, the State of after August, 1996.
- 5. On or about June 1, 2008, DHS approved FAP benefits to Respondent.
- 6. From June 12, 2008-January 19, 2009, about seven months, R espondent made 54 FAP purchases in Michigan.
- 7. On March 31, 2009, DHS terminated Respondent's FAP benefits.
- 8. On May 23, 2011, DHS Sent Respondent a Notice of Disqualification Hearing.
- 9. This is the first FAP IPV allegation against Respondent.
- 10. DHS s eeks a recoupment order for \$1,227.98, which is the amount of FAP benefits Respondent received from DHS from June 12, 2008-March 31, 2009, a nine-month period.
- 11. DHS also seeks a ten-year disqual ification penalty based on Respondent's receipt of government benefit s concurrently in two st ates from June 1, 2008-March 31, 2009, a ten-month period.

#### CONCLUSIONS OF LAW

FAP was established by the United States Food Stamp Act of 1977 and is implemented by Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL Section 400.10 *et seq.* and Michigan Administrative Co de Rules 400.3001-3015. DHS'

current FAP policies and procedures are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Refe rence Tables (RFT), which ar e available online at <u>www.mich.gov/dhs-manuals</u>.

DHS alleges that Respondent committed an IPV by intentionally failing to report receipt of food benefits in the from April 1, 2008-March 31, 2009. DHS alleges Respondent unlawfully received F AP benefits of \$1,227.98. DHS requests a finding of a first-ti me FAP IPV, and in the event t hat the Administrative Law Judge makes this finding, DHS asks that Respondent be disqua lified from receiving FAP benefits for ten years based on his concurrent receipt of benefits in two states. DHS also requests an Order granting it the authority to recoup the \$1,227.98 FAP overissuance (OI).

The question before me is whet her there is clear and convincing evidence to prove that Respondent committed an alleged Intentional Program Violation according to law. In this case, the applicable law is found in DHS policies and procedures.

The DHS manual item that is applicable in this cas e is BAM Item 720, "Intentional Program Violation," which can be found online. <u>www.michigan.gov/dhs-manuals</u>.

I quote BAM 720:

#### Suspected IPV

**Suspected IPV** means an OI exists for which all three of the f ollowing conditions exist:

- The cli ent **intentionally** failed to report inform ation **or inten tionally** gave incompl ete or ina ccurate info rmation needed to make a correct benefit determination, **and** 

- The client was cl early 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 su spected when there is clear and convincing evidence that the client or CDC provid er has intentionally withheld or misrep resented information for the **purpose** of establi shing, mainta ining, increa sing or preventing reduction of progra m benefits or eligibilit y. BAM 720, p. 1 (boldface in original.).

Looking at the first IPV element, failure to report, the first question I must consider is whether Respondent failed to report an it em of information to DHS. If he reported everything, then he has not committed an IPV. The information in question is the receipt of food benefits.

In considering this question, I have reviewed all of the evidence and the testimony in this case as a whole. Section A of Respondent's application clearly states that either he received benefits from the State of **Exercise** or he moved from the state after August, 1996. I cannot see how this case as a be construed to mean that he did not disclose his

benefits. At the point that Resp ondent answered "Yes" to the question DH S asked, he fulfille d his duty to report that he either received ass istance from another state or moved from that state after August, 1996. Indeed, on the next line he indicated the name of the state, **and also the county**, **and also the county**, **and also the county**.

Based on this analys is, I find as fact that Cla imant reported his receipt of benefits to DHS, and accordingly the first element of IPV is not fulfilled in this case.

Because I have found that the first IPV element cannot be satisfied, it is im possible to find an IPV in this case. This is because all three IPV elements must be met in order for a decis ion of IPV. Accordingly I have no need to review the second and third IP V elements, because, even if DHS were to prove them, it would not be sufficient evidence to carry DHS' burden of proof for an IPV case.

In conclusion, based on the findings of fact and c onclusions of law above, I find and conclude that DHS f ailed to provide by c lear and c onvincing evidenc e that an IPV occurred in this case. DHS' request for a finding of IPV is DENIED.

I turn next to the Department's request for authority to take action in this matter. Based on the record before me, I find that the agency erred in failing to take note of Respondent's positive answer in Section A of the application, and t herefore I find and decide that agency error occurred. This agency error resulted in an ov erissuance to Respondent through no fault of his own, but nonetheless DHS may recoup it.

A further consideration in this c ase is in regard to the amount of recoupment that i s appropriate. In this case DHS submitt ed FAP purc hase records showing a final purchase on January 19, 2009. However, DHS produced no evidence to verify that DHS paid FAP be nefits to Claimant in the following two months, February and March, 2009. Therefore, I can only find and conclude that DHS is not entitled to recoup benefits for these two months, as these dates and amounts have not been documented in the record before me.

One final question must be considered, and that is the Department's request for a tenyear disqualification penalty for dual receipt of benefits. This decision must be based on the requirements of BEM 203, "C riminal Justice Disqualifications." BEM 203 states as follows:

Duplicate Receipt of Assistance. FAP

A person is disqualified for a period of 10 years if found guilty through the Administrative He aring P rocess, convicted in court or by sig ning a repayment and disqualification agreement... of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203, p. 1.

Having examined all of the evidence and testimony as a whole, I find nothing in the record that constitutes a fraudulent statement or representation by Respondent to DHS, regarding his identity or residence, in order to receive mult iple benefits simultaneously. There is nothing in the record to show what statements or representations Respondent gave to the caseworkers, and BEM 203 disallows any presumption on my part that he made a fraudulent statement in Caseworkers. Accordingly, I DENY DHS' request for a ten-year disgualification penalty in this case.

#### DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, decides and c oncludes that DHS has not establis hed by clear and convincing evidence that FAP Intentional Program Violation occurred in this case. DHS' request for a finding of FAP IPV is DENIED. DHS' r equest for a first-time violation penalty is DENIED. DHS' request for a ten-year di squalification penalty for dual receipt of assistance is DENIED.

IT IS FURTHER ORDERED that DHS' request for recoupment authority in the amount of \$1,227.98 is PARTIALLY GRANT ED AND PARTIALLY DENIED. IT IS HEREBY ORDERED that DHS is permitted to recoup only that amount of FAP purchases in the record in t his case, and DHS is not permitted to recoup benefits that may have been issued to Respondent in February and March, 2009.

Ja

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

Date Signed: June 30, 2011

Date Mailed: June 30, 2011

**<u>NOTICE</u>**: The law pr ovides 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

