

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2010-52345
Issue No. 3055
Case No. [REDACTED]
Hearing Date: June 29, 2011
Wayne (31)

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 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 June 29, 2011. The Respondent did not appear. [REDACTED] OIG Lead Agent, 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 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 May 14, 2007, Respondent signed an application for FAP benefits with DHS, by and through [REDACTED] who holds Power of Attorney for Respondent.
2. Respondent's signature appears immediately 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.)

3. On or about June 1, 2007, DHS awarded FAP benefits to Respondent.
4. From June-September, 2007, Respondent made six FAP purchases in Michigan.
5. On or about October 1, 2007, Respondent moved to the [REDACTED]
6. Respondent failed to report to DHS that he changed his address and moved to [REDACTED]
7. From October, 2007-April, 2009, a period of nineteen months, Respondent made 117 FAP purchases in the State of [REDACTED] and no purchases in Michigan.
8. On March 1, 2008, DHS mailed a Mid-Certification Contact Notice to Respondent in [REDACTED] Michigan.
9. On March 14, 2008, Respondent submitted the signed Contact Notice to DHS, stating, "No Change." Respondent's signature appears below the following printed statements:

9. PENALTY WARNING

Anyone in your household who breaks any of these rules on purpose can be barred from the Food Assistance Program for 1 year for the first violation, 2 years for the second violation, and life for the third violation; fined up to \$250,000, imprisoned up to 20 years, or both; and subject to prosecution under other applicable federal laws.

DO NOT give false information, or hide information, to get or to continue to get food assistance benefits....

10. YOUR SIGNATURE AND DATE

I understand the penalty warning above. I also understand that I will owe the value of any extra Food Assistance benefits I receive if I don't fully report changes in my household circumstances. I agree to prove any changes I report if you ask.

I CERTIFY THAT THE STATEMENTS ON THIS FORM ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

10. On or about May 12, 2008, the State of [REDACTED] awarded food assistance benefits to Respondent.
11. On April 30, 2009, DHS terminated Respondent's FAP benefits.
12. On July 23, 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.

13. On May 23, 2011, DHS Sent Respondent a Notice of Disqualification Hearing with accompanying documentation.
14. This is the first FAP IPV allegation against Respondent.
15. DHS seeks a recoupment order for \$1,442, which is the amount of FAP benefits Respondent received from DHS from October 1, 2007-April 30, 2009, a period of nineteen months.
16. DHS also seeks a ten-year disqualification penalty based on Respondent's receipt of government benefits concurrently in two states from May 12, 2008-April 30, 2009.

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 Code Rules 400.3001-400.3015. DHS' current FAP policies and procedures are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables (RFT), which are available online at www.mich.gov/dhs-manuals.

DHS alleges that from October 1, 2007-April 30, 2009, a period of nineteen months, Respondent committed an IPV by his intentional failure to report a change of address, and secondly, by receiving food assistance benefits concurrently from Michigan and ██████████. DHS alleges Respondent unlawfully received FAP benefits of \$1,442. DHS requests a finding of a first-time FAP IPV and, in the event that the Administrative Law Judge makes this finding, DHS asks that Respondent be disqualified 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 a \$1,442 FAP overissuance (OI).

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

The DHS manual item applicable in this case is BAM 720, "Intentional Program Violation," which is available online. www.michigan.gov/dhs-manuals. The IPV definition in effect in 2007 is identical to the current definition in BAM 720.

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.
- 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).

Looking at the first IPV element, failure to report, the first question I must consider is whether Respondent had some information that he failed to report. If he did not, then the question of intent is moot. The information at issue is a change of address.

I have found as fact above that Respondent did quit his [REDACTED] apartment in [REDACTED] and move to [REDACTED]. This constitutes the change of address required in BAM 720. In this case Respondent has lived at two different residences in [REDACTED], and DHS has identified both residences from the [REDACTED] benefits records. I find this is sufficient to establish the change of address.

Next, with regard to when the change of address occurred, DHS presented the FAP activity report showing Respondent's Michigan and [REDACTED] purchases. I find and conclude it does reflect that the individual began to purchase food solely in [REDACTED] in October, 2007. I find that these records do support a legal conclusion that Respondent moved to [REDACTED] at that time. Accordingly, I find that DHS has presented clear and convincing evidence that Respondent did experience a change of address.

Now, as I have found as fact that Respondent did not report his change of address, I must determine if he did so intentionally. This requires me to turn to the second IPV element, whether Respondent was clearly and correctly instructed regarding his reporting responsibilities. If he was not so instructed then he is unaware of his responsibilities in this regard and cannot be said to have failed to perform them.

Based on the language of the Application and the Change Report paragraphs presented above, I find and conclude that Respondent was clearly and correctly instructed as to his reporting responsibilities. I find the language in the Application states that Respondent was given an Acknowledgments booklet, which states that changes must be reported within ten days. I find that the Change Report makes it clear that customers

have a responsibility to report changes. I find his signatures on these two documents prove he knew of his responsibilities. I therefore find as a fact that the second element, proof that the DHS instructed the client of her or his responsibilities, has been met.

Taking this conclusion back to the first IPV element, I now find and conclude that DHS has established by clear and convincing evidence that the necessary intent is present. I find and conclude therefore that the first IPV element is met.

Finally, I turn to the third and last IPV element, which is whether Respondent had any physical or mental incapacity that prevented him from understanding his responsibilities. I have examined all of the evidence and testimony as a whole in this case, and I find nothing to show that Respondent was impaired physically or mentally in any manner from understanding his responsibilities. I find that the third IPV element has been met.

In conclusion, based on the findings of fact and conclusions of law above, I find and conclude that IPV occurred in this case, and 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 IPV in this case consists of a failure to report a change of address. I also find that it is the first time Respondent intentionally violated program requirements, as specified in the DHS Notice of Disqualification Hearing in this case. I therefore GRANT DHS' request for an Order finding a first-time IPV penalty, and, I GRANT recoupment authority for the amount of the IPV, \$1,442.

In addition DHS requests a ten-year penalty for Respondent's dual receipt of assistance. This decision must be based on the requirements of BEM 203, "Criminal 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 Hearing Process, convicted in court or by signing 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 in this case as a whole, I find that the Department has presented clear and convincing evidence on this point. The March, 2008 Mid-Certification Contact Notice states there are "no changes." In addition, this statement appears at the top of page one of the document and it is handwritten in capital letters with asterisks on either side of it. I find and conclude that this, in conjunction with Respondent's signature on the document, constitutes a fraudulent statement and misrepresentation about Respondent's residence. I further find and conclude that the statement was made in order to receive multiple FAP benefits. I can find no other reason in the record before me for the statement on the Contact Notice.

In conclusion, based on the findings of fact and conclusions of law above, I find and determine that DHS has proved by clear and convincing evidence that Respondent committed a first-time IPV; that recoupment of \$1,442 is appropriate; and that a ten-year disqualification penalty from receiving Michigan FAP benefits is also appropriate in this case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides and concludes that DHS has established by clear and convincing evidence that FAP Intentional Program Violation occurred in this case. DHS' request for a finding of FAP IPV is GRANTED. DHS' request for a first-time violation penalty is GRANTED. DHS' request for recoupment authority in the amount of \$1,442 is GRANTED. DHS' request for a ten-year disqualification penalty for dual receipt of assistance is GRANTED.



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:

