

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

IN THE MATTER OF:



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| Reg. No. | 201042254 |
| Issue No. | 3052; 3055 |
| Case No. | [REDACTED] |
| Load No. | [REDACTED] |
| Hearing Date: | October 11, 2010 |
| Office: | Macomb County DHS (20) |

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on October 11, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Recoupment Specialist, appeared and testified.

ISSUE

1. Whether Claimant appropriately appealed a signed Disqualification Consent Agreement and a signed Intentional Program Violation (IPV) Repayment Agreement to the administrative hearing stage of appeals.
2. If Claimant appropriately appealed, whether Claimant can rebut a presumed IPV based on her apparent voluntary signature on a Disqualification Consent Agreement and Intentional Program Violation Repayment Agreement.
3. If Claimant can rebut her presumed IPV, whether there is a sufficient basis for a finding of an IPV based on Claimant's simultaneous receipt of FAP benefits in Michigan and Kansas.

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing FAP recipient.

2. On an unspecified date in 8/2007, Claimant reported to DHS that she was moving to Kansas and requested closure of all of her benefits.
3. On 8/22/07, DHS mailed Claimant a manually-drafted Benefit Notice (Exhibit 3) advising Claimant that her FAP benefits would end on 9/3/07.
4. Despite the mailing of the Benefit Notice, DHS failed to terminate Claimant's benefits on 9/3/07 and continued to issue monthly FAP benefits to Claimant until 4/2008.
5. Claimant was initially denied the equivalent of FAP benefits in [REDACTED] for 9/2007 because of her receipt of FAP in Michigan but was approved for FAP benefits in Kansas beginning 10/2007.
6. Unbeknownst to Claimant, Claimant's children's father used Claimant's FAP benefits in Michigan from 9/2007-4/2008.
7. On an unspecified date, DHS discovered that Claimant simultaneously received FAP benefits from Michigan and Kansas for the period of 10/07-4/08.
8. Prior to 3/11/10, Claimant was advised by a DHS representative that Claimant should sign a Disqualification Consent Agreement (Exhibit 1) and an Intentional Program Violation Repayment Agreement (Exhibit 2), submit the documents to DHS and then Claimant would be given two weeks to provide documents to the DHS representative which would verify that Claimant did not commit an IPV; if Claimant could provide such a document, then Exhibits 1 and 2 would be discarded.
9. Claimant signed Exhibits 1 and 2 and submitted them to DHS.
10. DHS accepted Exhibits 1 and 2 and did not subsequently discard them.
11. Claimant requested a hearing on 6/7/10 disputing her acknowledgement of an IPV as verified by her signature on Exhibits 1 and 2 and seeks to have the IPV overturned though Claimant concedes she is responsible for repayment of \$1,225 of Michigan issued FAP benefits from 10/07-4/08.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp Program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency)

administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). At the time of Claimant's alleged IPV, DHS policies were found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The client is determined to have committed an IPV by: a court decision, an administrative hearing decision or the client signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830, Disqualification Consent Agreement or other recoupment and disqualification agreement forms. BAM 720 at 1. In the present case, Claimant signed a DHS-830 (Exhibit 1). This document is akin to a confession in which the signer of the document agrees that an IPV occurred and it is agreed that there will be a penalty (10 years for duplicate receipt of benefits) which must be served. DHS contends that Claimant's voluntary signature on a DHS-830 prevents Claimant from requesting an administrative hearing concerning the IPV issue and that Claimant's appropriate remedy is to appeal to the relevant county circuit court. The undersigned is not inclined to agree.

All clients have the right to request a hearing. BAM 600 at 1. The following is a list of circumstances for which the State Office of Administrative Hearings and Rules (SOAHR) may grant a hearing: denial of an application and/or supplemental payments, reduction in the amount of program benefits or service, suspension or termination of program benefits or service, restrictions under which benefits or services are provided, delay of any action beyond standards of promptness or for Food Assistance Program only, the current level of benefits or denial of expedited service. Claimant's circumstances fall under suspension or termination of program benefits or service.

Part of the DHS contention that Claimant should appeal to circuit court is probably based on the finality of Claimant's signature on the DHS-830. The above policy cited in BAM 720 gives a court decision or an administrative decision the same weight as Claimant's signature on a DHS-830. The undersigned is somewhat persuaded by this policy to find that Claimant should appeal her IPV dispute to a circuit court, however, Claimant's true argument is that her signature on the DHS-830 is invalid because she signed the document based on misinformation. The undersigned believes that Claimant is entitled to an administrative hearing concerning this issue as an administrative judge has not yet addressed this specific issue. It is found that Claimant appropriately sought an administrative hearing concerning the validity of her signature on the DHS-830.

Though it is found that Claimant can appeal the validity of her signature to an administrative hearing, it must be determined whether there is a basis to invalidate Claimant's signature on the DHS-830.

As part of the IPV investigation process, DHS mails a Disqualification Consent Agreement (Exhibit 1) and an Intentional Program Violation Repayment Agreement (Exhibit 2) to the client suspected of IPV. The Disqualification Consent Agreement (DHS-830) informs a client, "If you sign this... you will be disqualified from participating in the programs shown even if you do not admit to the facts in your case." Thus, a client's signature on this form is akin to an admission that the signer committed an IPV. Claimant's particular DHS-830 indicated that Claimant's signature would create a 10 year disqualification from receiving FAP benefits due to receiving FAP benefits simultaneously in multiple states.

The Intentional Program Violation Repayment Agreement (DHS-4350) is also akin to an admission of IPV. This form specifically lists the amount of overpayment as a result of the IPV. In Claimant's case, the amount of repayment was \$1225. The DHS-4350 further states that if the form is not signed and returned then "further action will be taken by DHS".

According to Claimant, she was told by a DHS representative to sign and return the DHS-4350 and DHS-830 by a deadline or she would suffer some unspecified consequence. Claimant was also told by the same DHS representative that after she returned the forms, she could submit documents to establish that an IPV did not occur and the forms could be subsequently shredded.

Specifically, Claimant wanted to submit a notice of FAP benefit closure (Exhibit 3) that would have verified that DHS intended to terminate Claimant's FAP benefits prior to a time that Claimant received duplicate benefits. Such a document would tend to show that it was the fault of DHS that Claimant's FAP benefits were not terminated and that Claimant properly requested termination of the benefits. This document would be persuasive evidence that Claimant did not intend to defraud DHS. It was not made clear whether Claimant submitted the document and DHS was not persuaded, or Claimant was unable to submit the document within the timeframe provided by the DHS representative.

DHS confirmed Claimant's testimony concerning the procedures utilized by the DHS representative in obtaining Claimant's signature on the DHS-830 and DHS-4350. The undersigned finds the procedure utilized by DHS to obtain Claimant's signature to be sufficiently flawed to justify reversing the presumption that an IPV occurred based on Claimant's signature on the DHS-4350 and DHS-830.

There is no known valid reason as to why a client should be told to sign a document admitting to an IPV prior to the time she is given to submit a document which would tend to show an IPV did not occur. Placing such a condition upon accepting the submission of an exculpatory document is fundamentally unfair and unjust. The appropriate remedy is to disregard the DHS-4350 and DHS-830 as Claimant's signature

was obtained based upon an unreasonable and unfair condition. Despite the finding that Claimant's signature on a DHS-4350 and DHS-830 are invalid, it does not necessarily lead to a conclusion that an IPV did not occur.

Intentional Program Violation (IPV) is suspected when a client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. There must be clear and convincing evidence that the client acted intentionally for this purpose. PAM 720 at 1.

A clear and convincing threshold to establish IPV is a higher standard than preponderance of evidence and less than beyond any reasonable doubt. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

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. PAM 720 at 1.

The Code of Federal Regulations also define an IPV. Intentional Program violations shall consist of having intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system. 7 CFR 273.16(c).

In the present case, Claimant established by the notice of her FAP benefit termination dated 8/22/07 that she requested termination of her FAP benefits. Such evidence is very persuasive in finding that Claimant did not intend to defraud DHS.

It was not disputed that during the time that Claimant was in [REDACTED] (10/2007-4/2008) that the Michigan FAP benefits were spent in Michigan. Claimant testified that her child's father was part of her FAP benefits case and had his own FAP benefits card. She further testified that her child's father did not move to [REDACTED] with her and that he was the probable person who spent the FAP benefits issued by Michigan while Claimant received her FAP benefits in [REDACTED]. Claimant's testimony was credible and consistent. The undersigned is not inclined to find that Claimant committed an IPV as she attempted to terminate her FAP benefits, and only for DHS error did her FAP

benefits continue; further, Claimant could not have realistically spent Michigan issued FAP benefits in Michigan during a time she resided in [REDACTED].

Claimant did not dispute that DHS properly calculated the amount of FAP benefits she should not have been issued. \$1225. This amount covers the total Michigan FAP benefit issuances from 10/2007-4/2008. Claimant stipulated that she is responsible for repayment of the over-issued FAP benefits. The undersigned is inclined to accept Claimant's stipulation as DHS may recover over-issued FAP benefits even if the over-issuance was the fault of DHS. PAM 705 at 1.

DECISION AND ORDER

The actions taken by DHS are partially REVERSED. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that: Claimant properly requested a hearing concerning the issue of overturning her signed agreement that she committed an IPV, Claimant was sufficiently misled by DHS concerning the consequences of her signatures and Claimant did not commit an IPV. It is ordered that DHS remove the IPV at issue from Claimant's disqualification history.

The actions taken by DHS are partially AFFIRMED. The Administrative Law Judge, based upon the above findings of fact, conclusions of law and by consent of the parties, finds that DHS is entitled to recoup \$1225 in FAP benefits from Claimant.

/s/



Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: October 21, 2010

Date Mailed: October 21, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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