

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

IN THE MATTER OF:

[REDACTED]

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

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. [REDACTED] 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 [REDACTED].
2. From March 3, 2008-March 25, 2009, Respondent made 178 purchases in [REDACTED] using his [REDACTED] food assistance program benefits.
3. On May 14, 2008, Respondent applied for FAP benefits with DHS in Michigan. Respondent's signature appears below the following printed statement:

W. AFFIDAVIT

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

Under penalties of perjury, I swear that this application has been examined by or read to me, and, to the best of my knowledge, the facts are true and complete...

I certify that I have received a copy, reviewed and agree with the sections in the assistance application **Information Booklet** 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 true. I understand I can be prosecuted for perjury if I have intentionally given false or misleading information, misrepresented, hidden or withheld facts that may cause me to receive assistance I should not receive or more assistance than I should receive. I can be prosecuted for fraud and/or be required to repay the amount wrongfully received. I understand I may be asked 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 assistance from, the State of [REDACTED] 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, Respondent 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 seeks 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 disqualification penalty based on Respondent's receipt of government benefits concurrently in two states 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 Code Rules 400.3001-3015. DHS'

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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 Respondent committed an IPV by intentionally failing to report receipt of food benefits in ██████ from April 1, 2008-March 31, 2009. DHS alleges Respondent unlawfully received FAP benefits of \$1,227.98. 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 the \$1,227.98 FAP overissuance (OI).

The question before me is whether 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 case is BAM Item 720, "Intentional Program Violation," which can be found online. www.michigan.gov/dhs-manuals.

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 failed to report an item 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 ██████ or he moved from ██████ after August, 1996. I cannot see how this can be construed to mean that he did not disclose his

██████ benefits. At the point that Respondent answered “Yes” to the question DHS asked, he fulfilled his duty to report that he either received assistance 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, ██████

Based on this analysis, I find as fact that Claimant reported his receipt of ██████ food 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 impossible to find an IPV in this case. This is because all three IPV elements must be met in order for a decision of IPV. Accordingly I have no need to review the second and third IPV 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 conclusions of law above, I find and conclude that DHS failed to provide by clear and convincing evidence 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 therefore I find and decide that agency error occurred. This agency error resulted in an overissuance to Respondent through no fault of his own, but nonetheless DHS may recoup it.

A further consideration in this case is in regard to the amount of recoupment that is appropriate. In this case DHS submitted FAP purchase records showing a final purchase on January 19, 2009. However, DHS produced no evidence to verify that DHS paid FAP benefits 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 ten-year disqualification penalty for dual receipt of benefits. 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.


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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 multiple benefits simultaneously. There is nothing in the record to show what statements or representations Respondent gave to the [REDACTED] caseworkers, and BEM 203 disallows any presumption on my part that he made a fraudulent statement in [REDACTED]. Accordingly, I DENY DHS' request for a ten-year disqualification penalty 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 not established 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' request for a first-time violation penalty is DENIED. DHS' request for a ten-year disqualification 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 GRANTED AND PARTIALLY DENIED. IT IS HEREBY ORDERED that DHS is permitted to recoup only that amount of FAP purchases in the record in this case, and DHS is not permitted to recoup benefits that may have been issued to Respondent in February and March, 2009.



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:

