

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-1825  
Issue No.: 3055  
Case No.: [REDACTED]  
Hearing Date: May 4, 2011  
DHS County: Saginaw

**ADMINISTRATIVE LAW JUDGE:** Jan Leventer

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) Sections 400.9 and 400.37 and a request for a hearing presented by the Department of Human Services' (DHS) Office of the Inspector General (OIG). After due notice, a telephone hearing was held on May 4, 2011. Respondent did not appear. [REDACTED], 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 January 5, 2008, DHS provided FAP benefits to Respondent.
2. Between June 10, 2008, and February 7, 2009, Respondent's Supplemental Security Income (SSI) from the U.S. Social Security Administration increased from \$637 to \$674 per month.
3. On or about February 7, 2009, DHS mailed a DHS Change Report to Respondent on [REDACTED].
4. On February 9, 2009, Respondent submitted the signed Change Report to DHS. Respondent's signature appears below the following statement:

I understand that the information I provide on this report form may result in changes in my assistance, including reducing the amount of my checks (Cash Assistance, employment-related services and/or Child Development and Care), Food Assistance benefits and medical assistance, or closing my case. I understand that such change may be made without advance notice. **I am aware that, if I give false information which causes me to receive assistance I am not entitled to, or more assistance than I am entitled to, I can be prosecuted for fraud. I must report all changes in my situation within 10 days of learning of the change, or for earned income, within 10 days of the start date of employment.** (Boldface in original; underlining added for emphasis.)

5. The Change Report states that Respondent moved to a new residence and that her SSI benefits increased to \$674.
6. On September 30, 2009, DHS terminated Respondent's FAP benefits.
7. On December 9, 2009, Respondent applied for FAP and Medical Assistance benefits with DHS.
8. Respondent's December 9, 2009, application states she moved back to Michigan from [REDACTED], on December 1, 2009, that she received public assistance in [REDACTED], and that her caseworker's last name was [REDACTED].
9. On June 17, 2010, a [REDACTED] faxed three computer printout pages, each titled "Food Stamp Issuance History," to DHS, indicating that Respondent received food stamp benefits in [REDACTED] in July-September 2009.
10. On June 18, 2010, DHS sent Respondent an Intentional Program Violation Repayment Agreement and a Disqualification Consent Agreement, requesting her signature. Respondent did not sign and return the documents.
11. On March 31, 2011, DHS Sent Respondent a Notice of Disqualification Hearing with accompanying documentation.
12. This is the first FAP IPV allegation against Respondent.
13. DHS seeks a recoupment order for \$207, which is the amount of FAP benefits Respondent received from DHS from July 1-September 30, 2009, a period of three months.

14. DHS also seeks a ten-year disqualification penalty based on Respondent's receipt of government benefits concurrently in two states from July 1-September 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 400.3001-3015. DHS' current FAP policies and procedures are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables (RFT), which are available online at [www.mich.gov/dhs-manuals](http://www.mich.gov/dhs-manuals).

DHS alleges that from July 1-September 30, 2009, a period of three months, Respondent committed an IPV by her intentional failure to report a change of address and, secondly, by receiving food assistance benefits concurrently from the States of Michigan and [REDACTED]. DHS alleges Respondent unlawfully received FAP benefits of \$207. 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 her receipt of benefits in two states concurrently. DHS also requests an Order granting it the authority to recoup the \$207 FAP overissuance (OI).

The question before me is whether there is clear and convincing evidence to prove that Respondent committed the alleged IPV according to law. In this case, the applicable law is found in DHS' policies and procedures in effect at the relevant time.

The DHS manual section that is applicable in this case is BAM Item 720, "Intentional Program Violation," effective July 1, 2009. It was in effect for the three-month period at issue in this case. The IPV definition is identical to the definition in the current BAM 720, "Intentional Program Violation," which can be found online at [www.michigan.gov/dhs-manuals](http://www.michigan.gov/dhs-manuals).

I quote BAM 720:

#### **Suspected IPV**

**Suspected IPV** means an OI [overissuance] 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, effective July 1, 2009, 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 she failed to report. If she did not, then the question of intent is moot. The information at issue is a change of address.

DHS does not specify Respondent's new address, and in support of its allegation that Respondent moved, DHS submits three items of evidence: Respondent's December 12, 2009, application, the Department's Electronic Benefits Transfer (EBT) purchase report, and the [REDACTED] Food Stamps Benefits program records. Examining first Respondent's application, I note the following information in page B, Item 5:

Respondent has moved from, or received assistance from another state after August 1996 in [REDACTED], she moved to Michigan on December 1, 2009, and her [REDACTED] public assistance caseworker's last name was [REDACTED]. Department Exhibit 1, p. 20.

While there are at least three styles of handwriting on this page and information may have been written on the application after Respondent signed it, I find this application to be clear and convincing evidence that Respondent lived in [REDACTED], she received public assistance there, her caseworker's last name was [REDACTED] and she moved to Michigan on December 1, 2009. I find that this document has sufficient inherent reliability, in that Respondent intended to be truthful about her circumstances so as to qualify for public assistance. I find it is clear and convincing evidence, and I find as fact that Respondent changed her address.

Respondent's address, however, could have changed in October or November 2009 after the alleged overissuance, and I must determine when Respondent changed her address. The EBT purchase report contains Respondent's purchase history from January 5, 2008-September 25, 2009. The report indicates that while she lived in zip code area [REDACTED] she shopped at certain stores, and when she moved to zip code area [REDACTED] the pattern changed towards more stores in that zip code area. Also, from January 5, 2008-May 12, 2009, sixteen months, she made 126 purchases, an average

of eight per month. Then, in the four months from June-September 2009, Respondent made eleven purchases in [REDACTED] and one purchase in Michigan.

Based on Respondent's purchase history, I do see a pattern which supports the conclusion that Respondent changed her address on or after May 12, 2009. On May 12, 2009, two things occurred: Respondent stopped making EBT purchases on a regular basis in Michigan and, in contrast to her previous frequent purchases, made no purchases at all for three weeks. After June 6, a new pattern emerges. Based on this analysis, I find as fact that Claimant moved to [REDACTED] at some point before or during the alleged OI period of July-September 2009.

Having found as fact that Respondent did change her address, I turn now to the question of intent. I now must determine whether Respondent knew she was required to report a change of address. If she did not know of her responsibility, it cannot be said that she intentionally did not perform it. The evidence in the record indicates that Respondent signed a Change Report just below a statement requiring her to report changes in her situation within ten days. I find this is clear and convincing evidence that Respondent knew of her duty to report a change of address. Based on this evidence, I find as fact that Respondent intentionally failed to report a change of address. The presence of intent fulfills the requirements of the IPV first element. I now turn to the second IPV element, which is whether DHS clearly and correctly instructed Respondent about her responsibilities.

Based on the language of the Change Report paragraph presented above, I find as fact that Respondent was clearly and correctly instructed as to her reporting responsibilities. I find the language in the Change Report is clear and correct, and I find her signature proves that she received the Change Report. I therefore find as fact that the second element, proof that the DHS instructed the client of her or his responsibilities, has been met.

Third, I turn to the last IPV element, which is whether Respondent had any physical or mental incapacity that prevented her from understanding her 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 her 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 DHS' 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, \$207.

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.

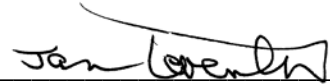
FAP

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 as a whole, I find nothing in the record that constitutes a fraudulent statement or representation by Respondent to DHS, regarding her identity or residence in order to receive multiple benefits simultaneously. I do not find that Respondent's failure to report a change of address is such a statement or representation. There is nothing in the record to show what statements or representations Respondent gave to the [REDACTED] caseworkers, and BEM 203 disallows a presumption on my part that she made a fraudulent statement. 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 established by clear and convincing evidence that FAP IPV 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 \$207 is GRANTED. DHS' request for a ten-year disqualification penalty for dual receipt of assistance is DENIED.



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

Date Signed: May 9, 2011

2011-1825/JL

Date Mailed: May 10, 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/she lives.

JL/pf

cc:

