

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-4274
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 Office of the Inspector General (OIG) of the Department of Human Services (DHS). 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. Respondent is a homeless person.
2. On September 11, 2008, Respondent signed an application for FAP benefits.
3. Also on September 11, 2008, Respondent received an Information Booklet, DHS Form DHS-1171, stating she must report changes of address within ten days of the change.
4. Respondent began receiving FAP benefits.

5. From December 1, 2008, to March 19, 2009, a period of four months, Respondent made twenty-one FAP purchases in the State of California using her Michigan FAP Electronic Benefits Transfer (EBT or Bridge) card.
6. Respondent continued to receive FAP benefits until May 28, 2009.
7. On June 10, 2010, DHS sent Respondent an Intentional Program Violation Repayment Agreement and Disqualification Consent Agreement, requesting her signature. Respondent did not sign and return the documents.
8. On March 31, 2011, DHS Sent Respondent a Notice of Disqualification Hearing/ Request for Waiver of Disqualification Hearing with accompanying documentation.
9. This is the first FAP IPV allegation against Respondent.
10. DHS seeks a recoupment Order for \$904, which is the amount DHS alleges Respondent unlawfully received from December 1, 2008-April 30, 2009, a period of five months.

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.

DHS alleges that from December 1, 2008, through April 30, 2009, a period of five months, Respondent committed an IPV by her intentional failure to report a change of residence from the State of Michigan to the State of California. DHS alleges Respondent unlawfully received FAP benefits of \$904. DHS requests a finding of FAP IPV and, in the event that the Administrative Law Judge makes these findings, DHS asks that Respondent be disqualified from receiving FAP benefits for an IPV first-time offense. DHS also requests an Order granting it authority to recoup the FAP benefits that were unlawfully received.

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 August 1, 2008. It was in effect on September 11, 2008, when Respondent applied for FAP benefits. It is identical to current BAM 720, "Intentional Program Violation," which can be found online at 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 August 1, 2008, p. 1. (Boldface in original.)

I have examined all of the documents and testimony presented in this case. Respondent is a homeless person, and I find nothing in the record to establish by clear and convincing evidence that Respondent's status as a homeless person has changed. I find and conclude that unless her status as a homeless person has changed, there is no change of address for her to report to DHS and there is no requirement to report when there has been no change. By way of corroborating that fact, I note moreover that on her application, Respondent gave her younger sister's address in [REDACTED] as her mailing address, and recent DHS correspondence to this address has not been returned as undeliverable. I therefore conclude that Respondent's [REDACTED] mailing address has not changed either.

I find and determine that the Department's deduction is that because Respondent is using FAP benefits in another state, her homeless status has changed. I decline to make that assumption, as it is equally possible that she continues to be homeless. Indeed, the Department contacted the California Department of Social Services to see if Respondent was receiving benefits from them and was informed that she was not. I

2011-4274/JL

infer from this that DHS cannot establish by clear and convincing evidence that Respondent's homeless status has undergone a change.

I have examined the EBT purchase record which is in evidence in this case. The EBT purchase record is the sole evidence submitted by the Department in support of a change of address by Respondent. The purchase record shows the date of purchase, the amount, and the store at which the purchases were made. I cannot infer from this evidence that Respondent has a new address, because it is equally possible that she is still homeless and is accepting temporary accommodations with relatives, friends, or at a public shelter. I find the purchase record is insufficient evidence upon which to base a finding of IPV.

In conclusion, based on the findings of fact and conclusions of law above, I find and determine that DHS has not proved IPV in this case. DHS' request for a finding of FAP Intentional Program Violation is DENIED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that DHS has failed to establish by clear and convincing evidence that FAP IPV occurred in this case. DHS' request for a finding of FAP IPV is DENIED. As I have found there was no change of address, I DENY DHS' recoupment request as well.



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

Date Signed: May 9, 2011

Date Mailed: May 10, 2011

2011-4274/JL

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:

