

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201154992
Issue No. 3055; 4060
Case No. [REDACTED]
Hearing Date: November 20, 2011
Lapeer County DHS

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 Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on November 30, 2011 from Detroit, Michigan. The Department was represented by [REDACTED], of the Office of Inspector General. Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3187(5).

ISSUES

The first issue is whether DHS established that Respondent committed an Intentional Program Violation (IPV) concerning receipt of Food Assistance Program (FAP) benefits.

The second issue is whether DHS established a basis for debt collection and/or recoupment based on an alleged overissuance of FAP benefits.

FINDINGS OF FACT

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

1. Respondent was an ongoing FAP benefit recipient.
2. Respondent received a total of \$1,400 in FAP benefits from 2/2010 through 8/2010.
3. DHS subsequently learned that Respondent exclusively utilized the FAP benefits from 2/2010 through 8/2010 exclusively within the State of Florida.

4. Respondent obtained a driver's license in Florida in 4/2010.
5. On 9/2/11, DHS requested an IPV and/or debt collection hearing against Respondent concerning \$1,400 of allegedly over-issued and fraudulently obtained FAP benefits.

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). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

Concerning whether an IPV occurred, the DHS regulations in effect at the times of the alleged overissuance shall be considered. Concerning whether DHS properly followed IPV and debt collection procedures, the regulations in effect as of 9/2011 (the month of the DHS hearing request) shall be considered. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

This hearing was requested by DHS, in part, to establish that Respondent committed an IPV. DHS may request a hearing to establish an IPV and disqualification. BAM 600 at 3.

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. BAM 720 at 1.

IPV is suspected when there is **clear and convincing** (emphasis added) 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 at 1.

A clear and convincing threshold to establish IPV is a higher standard than a preponderance of evidence standard and less than a beyond any reasonable doubt

standard. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

The Code of Federal Regulations also defines 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).

The client/authorized representative (AR) is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- 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. *Id.*

In the present case, DHS alleged that Respondent committed fraud by moving to Florida and failing to report the change to his DHS. The evidence established that Respondent left Michigan to permanently stay in Florida prior to the period of overissuance. This was convincingly established by records which verified Respondent exclusively accessed FAP benefits in Florida and even obtained a driver's license in Florida.

It is less clear whether Respondent's failure to report a move to Florida was intentional. Generally, the intent for fraud is established by written documentation from a client which contradicts known facts. Alternatively, an intent of fraud could be established by verifying that a client received benefits for which the client knew or should have known they were not entitled. In the present case, DHS had no records from Respondent which asserted a false residence. DHS also did not establish that Respondent received a windfall of benefits, such as FAP benefits issued by Florida and Michigan.

From Respondent's perspective, benefits are benefits whether they are issued by Michigan or Florida. A respondent would not necessarily be expected to know or care that benefits are issued by the state of residence. Though Respondent perhaps should have known to report a change in residence, it would not necessarily follow that Respondent had the intent to defraud by failing to report the change. Accordingly, it is found that DHS failed to establish that Respondent committed an IPV. It must then be considered whether an overissuance of FAP benefits occurred.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 at 1. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

DHS may pursue an OI whether it is a client caused error or DHS error. *Id.* at 5. Client and DHS error OIs are not pursued if the estimated OI amount is less than \$125 per program. BAM 700 at 7. If improper budgeting of income caused the OI, DHS is to recalculate the benefits using actual income for the past OI month for that income source. BAM 705 at 6.

For all programs, a person must be a Michigan resident. BEM 220 at 1. For FAP benefits, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. *Id.*

In the present case, DHS established that Respondent began exclusively accessing FAP benefits from Michigan in Florida effective 12/16/09. DHS also established that Respondent remained in Florida and even obtained an official Florida address effective 4/2010. DHS further established that Respondent continued accessing the State of Michigan issued FAP benefits through 8/14/10. Based on the presented evidence, it was established that Respondent ended Michigan residence by 2/2010 and therefore should have lost FAP benefit eligibility through 8/2010. DHS established that DHS over-issued \$1,400 in FAP benefits through 8/2010 as a result of the error. It is irrelevant whether Respondent failed to report the change or whether DHS acted on the change as DHS may recoup benefits in either circumstance. It is found that DHS established a basis for a \$1400 overissuance of FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to establish that Respondent committed an IPV concerning \$1400 in FAP benefits issued from 2/2010-8/2010. The hearing request is PARTIALLY DISMISSED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established a basis for debt collection and/or recoupment against Respondent for \$1400 in FAP benefits over-issued from 2/2010-8/2010. The actions

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taken by DHS are PARTIALLY AFFIRMED.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/7/11

Date Mailed: 12/7/11

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.

CG/hw

cc:

