

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2011-8205
Issue No. 3055
Case No. [REDACTED]
Hearing Date: June 29, 2011
Wayne (17)

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 Lead 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, 2007-September, 2009, Respondent lived at [REDACTED]
2. On or about August 1, 2008, DHS provided Respondent with FAP benefits.
3. On June 18, 2009, Respondent signed an application for FAP benefits with DHS. 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, Repayment 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. Respondent's 2009 application had a phone number with a [REDACTED] Area Code, and her rent was \$550 per month.
5. From August 8, 2008-August 16, 2009, a twelve-month period, Respondent made sixty-seven FAP purchases in [REDACTED] and none in Michigan.
6. On January 28, 2010, DHS sent Respondent an Intentional Program Violation Repayment Agreement requesting her signature. Respondent did not sign and return the document.
7. On May 23, 2011, DHS Sent Respondent a Notice of Disqualification Hearing with accompanying documentation.
8. This is a first-time FAP IPV allegation against Respondent.
9. DHS seeks a recoupment order for \$2,110, which is the amount of FAP benefits DHS alleges Respondent received from August 1, 2008-December 31, 2009, a sixteen-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' 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.

In this case, DHS alleges that from August, 2008-December, 2009, a sixteen-month period, Respondent committed an IPV by intentionally reporting a false address in [REDACTED] Michigan, when she actually lived in [REDACTED]. DHS alleges Respondent unlawfully received FAP benefits of \$2,110. DHS requests a finding of a first-time FAP IPV. DHS also requests an Order granting it the authority to recoup the \$2,110 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 section 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, 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 ever provided a false address to DHS. If Respondent provided her real address, then she did not provide a false one, and DHS' allegations must be denied. The information at issue is Respondent's address.

In determining Respondent's address, I have reviewed all of the evidence and testimony in this case as a whole. I find nothing in the record to show what address Respondent gave to DHS between August, 2008 and June 17, 2009. Therefore I find there is no factual basis for a conclusion that Respondent gave a false address to DHS during that time. I must find and conclude that no IPV could occur then, because I have no address to examine, much less a false one.

Looking next at the date of June 18, 2009, this is the date of Respondent's application which states the [REDACTED] address as her residence. There is nothing in the record to refute this address information. In fact, Respondent has specified her rent amount, \$550, and she has a [REDACTED] Area Code as part of her phone number. The single document submitted by DHS to establish that this is a false address is a Smart Link's Comprehensive Report. This document indicates that Respondent lived in [REDACTED] from March, 2007-September, 2009. This document lists two other addresses where Respondent could also have lived on June 18, 2009: [REDACTED] (August, 1998-October, 2009), and [REDACTED] (March, 2005-May, 2009). This document also indicates that Respondent could have lived in Michigan and [REDACTED] in 1986-1999 as well.

Considering this information as to Respondent's state of residence beginning June 18, 2009, I determine that DHS has not submitted clear and convincing evidence to establish that Respondent's [REDACTED] address was false. Indeed, according to the information submitted, I cannot rely on the document's accuracy in this matter.

In this case however, DHS submitted additional evidence that the Respondent's FAP purchase history, showing 117 purchases in [REDACTED] and none in Michigan, proves that she gave a false address. I decline to make this assumption. This assumption is based on a second assumption, which is that people buy food in the area where they live. While this may be true for many people, I do not find this assumption to be applicable in this case, where the Respondent appears to have close ties, in all likelihood family ties, in two different states. Stated in another way, I find it is entirely possible that Respondent spends a great amount of her time with family members in [REDACTED] while continuing her own personal life in Michigan. Accordingly, I do not find on the record before me that Respondent gave a false address to DHS on June 18, 2009.

In conclusion, based on the findings of fact and conclusions of law above, I find that DHS has not proved by clear and convincing evidence, the first element of IPV. As all three elements must be proved in order for IPV to be established, there cannot be an IPV decision in this case. DHS' request for such a finding is DENIED.

As I make no finding of IPV, I find that no over issuance occurred in this case as well. I find and conclude that Respondent was entitled to the FAP benefits she received, and no error occurred in providing FAP benefits to Respondent. DHS' request for an Order permitting recoupment is DENIED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides and concludes that DHS has failed to establish by clear and convincing

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evidence that a FAP Intentional Program Violation occurred in this case. DHS' request for a finding of FAP I PV is DENIED. DHS' request for recoupment authority in the amount of \$2,110 is DENIED, because no overissuance occurred in this case.



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:

