

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

IN THE MATTER OF:



Reg. No.: 201214587
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: March 14, 2012
County: Wayne DHS (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

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 March 14, 2012, from Detroit, Michigan. The Department was represented by [REDACTED] of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: .

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

1. Did Respondent commit an Intentional Program Violation (IPV)?
2. Did Respondent receive an overissuance (OI) of

- | | |
|------------------------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Family Independence Program (FIP) | <input checked="" type="checkbox"/> Food Assistance Program (FAP) |
| <input type="checkbox"/> State Disability Assistance (SDA) | <input type="checkbox"/> Child Development and Care (CDC) |
| <input type="checkbox"/> Medical Assistance (MA) | |

benefits that the Department is entitled to recoup?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on 11/3/11 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FIP FAP SDA CDC MA benefits during the period of 9/2009, through 3/2010.
4. Respondent was was not aware of the responsibility to report household changes.
5. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period they are considering the fraud period is 9/2009-3/2010.
7. During the alleged fraud period, Respondent was issued \$3682 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent was entitled to \$2569 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$1113 under the FIP FAP SDA CDC MA program.
10. The Department has has not established that Respondent committed an IPV.
11. A notice of hearing was mailed to Respondent at the last known address and was was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) 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). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

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.*

DHS alleged that Respondent committed an IPV by failing to report a change in household members that affected FAP benefit eligibility. DHS presented documents (see Exhibits 11-30) which established that a minor child within Respondent's FAP benefit group received FAP benefits from [REDACTED] during the time of 9/2009-3/2010. DHS also established that the same child also received FAP benefits from the State of Michigan as part of Respondent's FAP benefits case during the same timeframe.

DHS presumed that the continued inclusion of a FAP benefit member that received FAP benefits from another state was the fault of Respondent. DHS did not present any evidence that established the presumption.

DHS did not furnish any Respondent completed documents which listed an inaccurate benefit factor. DHS presented no documents from Respondent that listed a household member who was known not to be part of Respondent's household at the time the document was made. Thus, the basis of the alleged fraud was a failure by Respondent to report changes to DHS.

Though it is possible that Respondent received a windfall of FAP benefits based on a failure by Respondent to report a change in household members, the windfall could have also been a result of negligence by DHS. It is plausible that Respondent timely reported a change in household but DHS failed to act on the change. As there was no presented evidence to establish that Respondent intentionally failed to report a change in household members, it is found that DHS failed to establish fraud by Respondent. It must then be determined whether DHS established a basis for recoupment and/or debt collection

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.

DHS established that a minor child within Respondent's household concurrently received FAP benefits in multiple states. A person's concurrent receipt of FAP benefits from two states can only be explained by concluding that one of the state's benefit issuances were made in error.

No direct evidence was presented whether Michigan or ██████ issued FAP benefits in error. DHS presumed an OI of Michigan FAP benefits because the minor child began on Respondent's Michigan case and later became a part of a FAP benefit case in West Virginia. This scenario would require accepting a fact scenario that the child moved from Michigan to ██████ shortly before the time FAP benefits were issued for the child in ██████; the OI comes from Respondent continuing to collect FAP benefits through the benefit period for the child who left the household. This is a reasonably plausible scenario. The presumption also tends to be established by Respondent's absence from the investigation and hearing process. DHS alleged that Respondent was unresponsive to an interview request (see Exhibit 3). Respondent failed to attend the hearing. It is found that DHS establish an OI of FAP benefits due to the inclusion of a minor child in Respondent's household.

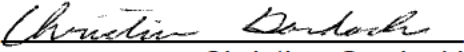
DHS presented OI budgets (Exhibits 33-41) that calculated the difference between a group size of three persons that included the minor child and the group size that excluded the minor child. The difference between the FAP benefits that Respondent received and should have received is \$1113. DHS established a basis for debt collection against Respondent of \$1113 in over-issued FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. Respondent did did not commit an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$1113 from the following program(s) FIP FAP SDA CDC MA.

The Department is ORDERED to initiate recoupment procedures for the amount of \$1113 in accordance with Department policy.


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

Date Signed: March 22, 2012

Date Mailed: March 22, 2012

201214587/CG

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:

