

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

IN THE MATTER OF:



Reg. No.: 201217371
Issue No.: 3055
Case No.: [REDACTED]
Hearing Date: March 14, 2012
County: Oakland DHS (04)

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 11/22/11 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG 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 10/1/10, through 3/31/11.
4. Respondent was was not aware of the responsibility to report any changes in the household.
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 10/2010-3/2011 reflects the period in which Respondent was allegedly over-issued benefits
7. During the alleged fraud period, Respondent was issued \$3156 in FIP FAP SDA CDC MA benefits from the State of Michigan.
8. Respondent was entitled to \$0 in FIP FAP SDA CDC MA during this time period.
9. Respondent did did not receive an OI in the amount of \$3156 under the FIP FAP SDA CDC MA program.
10. The Department has has not established that Respondent committed an IPV.
11. This was Respondent's first second third IPV.
12. 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

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).

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 allegedly moving out of the State of Michigan and failing to report the move to DHS while continuing to receive FAP benefits. The DHS allegation presumes that Respondent ceased being a Michigan resident.

In support of the presumption, DHS presented Respondent's EBT usage history (Exhibits 44-47). The EBT card is the card which is used to access FAP benefits. The history shows exclusive usage in Georgia from 10/4/10 – 11/27/10. Respondent's FAP benefit issuance history shows that Respondent continued receiving FAP benefits in Michigan until 3/2011, though the FAP benefits were not immediately used.

DHS also presented evidence which verified that Respondent began receiving FAP benefits in Georgia beginning 10/2010 and at least through 3/2011. Thus, Respondent concurrently received FAP benefits from multiple states. The EBT usage history shows that Respondent used the FAP benefits accrued from Michigan between 12/2010-3/2011 upon Respondent return to Michigan in 4/2011. The concurrent receipt of FAP benefits from [REDACTED] and Michigan is the basis of IPV.

Generally, the best evidence of an IPV is a client's written statement which contradicts known facts and was made solely for the purpose of obtaining benefits to which a person was not entitled. DHS conceded that they are unable to furnish any such statements. This tends to be supportive that fraud was not committed; without fraud there can not be an IPV.

Respondent's EBT usage is somewhat supportive of a finding that Respondent lacked the intent to commit fraud. EBT records show that Respondent stopped using the Michigan EBT within two months after leaving Michigan. Though DHS regulations state that a 30 day absence from Michigan (see BEM 212) is how DHS determines whether a person is absent from the household, an alleged failure to report less than a two month absence is not persuasive evidence of fraud by a client.

On the other hand, Respondent presumably returned to Michigan because EBT usage in Michigan restarted in 4/26/11. The EBT balance upon Respondent's return was \$2643.45. At this point, Respondent almost certainly knew that the balance was accrued during a time when Respondent received FAP benefits from [REDACTED]. Respondent's flagrant usage of benefits known to have been accrued during a time of absence and during a time when Respondent received FAP benefits out of state is extremely persuasive evidence of fraud.

It is improbable that the explanation for receiving concurrent FAP benefits can be justified by any explanation other than purposeful actions or inaction by Respondent. Based on the presented evidence, it is found that Respondent committed an IPV.

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 (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 at 1. It should be noted that Respondent made no such fraudulent statements. Respondent's IPV was a failure to report a change in residency and profiting by the failure to report. Thus, the concurrent receipt of FAP benefits is found to not apply.

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 Respondent received \$3156 in FAP benefits over the period of 10/2010-3/2011 and that the entire amount constituted an OI of FAP benefits. Budgets were presented supporting the OI amount (see Exhibits 41-42). It is found that DHS is established an OI of \$3156 in 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 \$3156 from the following program(s) FIP FAP SDA CDC MA.
- The Department is ORDERED to initiate recoupment procedures for the amount of \$3156 in accordance with Department policy.

It is FURTHER ORDERED that Respondent be disqualified from

FIP FAP SDA CDC for a period of
 12 months. 24 months. lifetime.

Christian Gardocki

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

Date Signed: March 21, 2012

Date Mailed: March 21, 2012

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:

