

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

IN THE MATTER OF:



Reg. No.: 2012-73483
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: October 17, 2012
County: Oakland DHS (03)

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 a request for a hearing by the Department of Human Services (DHS). After due notice, a telephone hearing was held on October 17, 2012 from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent for the Office of Inspector General (OIG). Respondent did not appear and the hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(3).

ISSUES

The first issue is whether Respondent committed an Intentional Program Violation (IPV).

The second issue is whether Respondent received an over issuance of benefits which may be recovered through debt collection actions.

FINDINGS OF FACT

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

1. Over the period of 9/2011-2/2012, Respondent was an ongoing Food Assistance Program (FAP) and Medical Assistance (MA) benefit recipient through the State of Michigan.
2. Over the period of 6/11-3/19/12, Respondent spent the Michigan issued FAP benefits in Georgia (see Exhibits 24-26).
3. Over the period of 9/2011-2/2012, Respondent received FAP benefits totaling \$3156.

4. Over the period of 9/2011- 2/2012, the State of Michigan spent \$1120.70 in MA premium expenses for Respondent's MA benefits, though Respondent never used the MA benefits.
5. On 9/4/12, DHS requested a hearing to establish that Respondent committed an IPV by receiving an overissuance of \$3156 in FAP benefits and \$1120.70 in MA benefits over the period of 9/2011-2/2012.

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 (RTM). 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 (8/2012), p. 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 (1/2011), p. 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. *Id.* 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 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.*

There is no evidence that Respondent signed a DHS-826 or DHS-830. There is also no evidence that a court decision found Respondent responsible for an IPV. Thus, DHS seeks to establish an IPV via administrative hearing.

To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220 (1/2012), p. 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.* Eligible persons may include persons who entered the state with a job commitment or to seek employment or students (this includes students living at home during a school break.) *Id.*

DHS presented a Lexis/Nexis report (Exhibit 27-44) to help establish out-of-state residency. The report contained multiple Michigan addresses for Respondent over the alleged OI period and one Georgia address. Because the report listed Michigan and Georgia address for Respondent, it was not deemed to be particularly persuasive in establishing that Respondent was not a Michigan resident during the alleged OI period.

DHS presented Respondent's State of Michigan FAP benefit usage history (Exhibits 24-26). The history verified that Respondent's FAP benefits were exclusively spent in Georgia over the period of 8/6/11 through 3/19/12. DHS contended that Respondent's use of FAP benefits outside of Michigan for an extended period was sufficient to establish that Respondent was not a resident of Michigan for the period of 9/2011-2/2012.

Respondent's FAP exclusive FAP benefit usage in Florida for an eight month period is persuasive evidence that Respondent did not reside in Michigan for at least some of the period when the benefits were accessed outside of Michigan. Of all the scenarios that would explain out-of-state usage, the most probable explanation is that Respondent resided outside of Michigan. It is found that Respondent was not a Michigan resident for at least part of the period where FAP benefits were spent outside of Michigan. Accepting that Respondent gave up Michigan residency, DHS contended that Respondent purposely failed to report a stoppage in Michigan residency to DHS, thereby committing fraud.

At some point when a person leaves the State of Michigan, it is reasonable to expect that person to report the change in residency to DHS. An approximate eight month period is long enough of a period that would lead a reasonable person to report a change in residency to DHS. This evidence was somewhat persuasive that Respondent committed fraud.

It is plausible that Respondent reported a change in residency but that DHS failed to act on Respondent's reporting. DHS was not able to present any written statement from Respondent which claimed residency in Michigan during a period when Respondent was known to be outside of Michigan. DHS also could not provide evidence of a verifiable reporting system establishing that the failure to change Respondent's address was the fault of Respondent. This evidence is supportive of finding that Respondent did not commit fraud.

It could be reasonably contended that Respondent's continued use of FAP benefits outside of Michigan is evidence that a change was not reported. However, it is not improper to use the benefits outside of Michigan. And from a client's perspective, the primary concern is receiving benefits rather than worrying about who is paying the benefits. It is worth noting that even if purposeful client error was established, this does not equate to fraud.

DHS did not allege that Respondent concurrently received FAP benefits from multiple states. Because Respondent did not receive FAP benefits from more than one state, there was no particular financial incentive for Respondent to commit fraud; presumably, Respondent would have received the same benefits from the state where the benefits were spent. Without evidence of a financial incentive, a contention of fraud is much less persuasive.

Based on the presented evidence, DHS failed to establish that Respondent intentionally failed to report a change in residency. Accordingly, it is found that DHS failed to establish that Respondent committed an IPV. Even though DHS failed to establish that Respondent committed an IPV, it must still be determined whether an overissuance of benefits occurred and whether DHS may pursue debt collection actions to recoup those benefits.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (1/2011), p. 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. *Id.*, p. 7. The present case concerns an alleged OI of \$1401. Establishing whether DHS or Respondent was at fault for the OI is of no importance because DHS may seek to recoup the amount in either scenario.

For benefits over-issued to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (4/2011), p. 13. Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

It was found above that Respondent was not a Michigan resident based on Respondent's extended FAP benefit usage outside of the State of Michigan. It would not necessarily follow that the date Respondent first accessed FAP benefits outside of Michigan corresponds with the date that Respondent gave up Michigan residency.

FAP benefit group composition policy notes that clients absent from a home for longer than 30 days are not considered temporarily absent. BEM 212 (9/2010), p. 2. The policy is not necessarily applicable in the present case but it would seem reasonable to allow clients a 30 day period before residency in another state is established; the 30 day period beginning with a client's first out-of-Michigan food purchase.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (9/2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Other changes must be reported within 10 days after the client is aware of them. *Id.* For non-income changes, DHS is to complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs ten days after the change is reported. *Id.*

Starting with the date establishing out-of-state FAP benefit usage (8/6/11) and adding 30 days to allow for establishment of residency, an additional 10 days to allow for reporting the change and an additional 10 days results in a date of 9/25/11. The first full benefit month following is 10/2011. Thus, 10/2011 is the month that would have been affected had the change been timely processed and found to be the first month of the potential overissuance period.

DHS established that Respondent received a total of \$2630 in FAP benefits from the State of Michigan over the period of 10/2011-2/2012 (see Exhibit 45). DHS also established that Respondent spent the FAP benefits outside of Michigan for the same time period. This is persuasive evidence that Respondent was not living in the State of Michigan and that Respondent should not have received State of Michigan issued FAP benefits. It is found that Respondent received \$2630 in over-issued FAP benefits for the period of 10/2011-2/2012. Accordingly, DHS established a basis of debt collection for \$1059 against Respondent.

DHS also seeks to establish debt collection against Respondent for \$1120.70 in Medicaid premiums paid on behalf of Respondent for the period of 9/2011-28/2012. It was already determined that Respondent was not a State of Michigan resident for

purposes of FAP benefits over the period of 10/2011-2/2012 resulting in debt establishment for the FAP benefits issued to Respondent.

DHS also seeks to establish a debt against Respondent for \$1,120.70 in MA premium expenses from Medicaid Claimant received over a period of 9/2011-2/2012. The finding that Respondent was not a Michigan resident beginning 10/2011 can be applied to the debt collection evaluation for MA benefits. However, the MA analysis has two important distinctions. First, there is no evidence that Respondent benefitted from the Medicaid. DHS conceded that Respondent never used the Medicaid over the period of 9/2011-2/2012. Secondly, for MA benefit overissuances, recoupment of agency error are not pursued. BAM 700 (12/2011), p. 5.

As noted in the IPV analysis, it cannot be determined with any certainty whether the OI was caused by a client's failure to report a change in address or a DHS error in not processing a reported change. In a FAP benefit analysis, the distinction is irrelevant because DHS may recoup in either circumstance; thus, a basis for debt collection was found. For MA benefits, DHS failed to establish that MA benefits were issued as a result of a client error. Thus, basis for debt collection was established.

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 Intentional Program Violation stemming from an over-issuance of FAP benefits from 11/2011-4/2012. DHS also failed to establish a basis for debt collection for MA benefits issued from 9/2011-2/2012 and for FAP benefits issued for 9/2011. The DHS 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 for \$2630 in FAP benefits over-issued to Respondent for the period of 10/2011-3/2012. The hearing request of DHS is PARTIALLY AFFIRMED.



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

Date Signed: October 30, 2012

Date Mailed: October 30, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or

reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Respondent may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Respondent may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the Respondent:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/ctl

cc:



C. Gardocki