

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201276914
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: January 16, 2013
County: Wayne DHS (55)

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 January 16, 2017, from Detroit, Michigan. DHS was represented by [REDACTED] Regulation Agent for the Office of Inspector General (OIG). The above-named respondent appeared and testified.

ISSUES

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

The second issue is whether Respondent received an overissuance 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. Respondent was an ongoing Food Assistance Program (FAP) and Child Development and Care (CDC) benefit recipient.
2. On 9/28/09, Respondent submitted a Semi-Annual Contact Report (SACR) (Exhibits 39-40) to DHS.
3. Respondent listed that she received employment income on the SACR.

4. Respondent failed to list a second job for which she received her first payment on 9/10/09.
5. Over the period of 10/1/09-12/31/09, Respondent received \$832.93 in CDC benefits.
6. If Respondent's second job was factored, Respondent was ineligible to receive CDC benefits over 10/1/09-12/31/09.
7. Over the period of 10/1/09-12/31/09, Respondent received \$1024 in FAP benefits.
8. If Respondent's second job was factored, Respondent was eligible to receive a total of \$48 in FAP benefits over the period of 10/1/09-12/31/09.
9. On 9/4/12, DHS requested a hearing to impose a one year IPV disqualification against Respondent and to establish a debt against Respondent in the amount of \$1808.93.

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 (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 (8/2012), 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.
BAM 720 (8/2012), p.1.

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.

DHS presented an Assistance Application (Exhibits 24-38) signed by Respondent on 3/18/09 and 4/6/09. Respondent's signature is an acknowledgment that she read an attached information booklet which indicates that a client is required to report all changes to DHS. The evidence tended to establish that Respondent was aware of her reporting responsibilities.

There was no evidence suggesting that Respondent was unable to understand her reporting requirements. The only hearing issue in dispute concerned whether Respondent intentionally withheld information from DHS so that she could obtain a higher benefit amount.

DHS alleged that Respondent committed an IPV by failing to report employment income. It was not disputed that Respondent submitted a redetermination document (the SACR) to DHS on 9/28/12. On the SACR, clients are expected to list all income. It was not disputed that Respondent's SACR failed to list a second job she had recently obtained. Generally, a written submission by a client which fails to list income resulting in an overissuance of benefits is presumed to be done intentionally.

Respondent testified that she did not believe that she needed to report the second job to DHS because it was only a temporary job. Payment history records from Respondent's second job verified that Respondent worked the job for three months. Respondent's excuse was verified. Respondent's excuse was not reasonable. Clients

have no reasonable expectation that three months worth of income is irrelevant to a benefit determination. Based on the presented evidence, it is found that DHS established that Respondent committed an IPV.

The standard disqualification period is used in all instances except when a court orders a different period. *Id.*, p. 13. DHS is to apply the following disqualification periods to recipients determined to have committed IPV: one year for the first IPV, two years for the second IPV and lifetime for the third IPV. *Id.* DHS established a basis for a one year disqualification against Respondent.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (12/2011), 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.*, p. 5. Client and DHS error OIs are not pursued if the estimated OI amount is less than \$125 per program. *Id.*, p. 7. It was established that the error was client-caused.

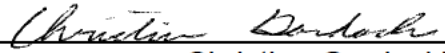
DHS presented FAP over-issuance budgets (Exhibits 48-53) for the months of 10/2009-12/2009. DHS used Respondent's income from her reported employment (see Exhibits 13-17) and unreported employment (Exhibits 19-23). The budgets verified that if Respondent's unreported income was factored in her FAP benefit eligibility, Respondent would have received \$16/month of FAP benefits for each of the period of 10/2009-12/2009. The budgets also note that Respondent received a total of \$1024 in FAP benefits for the three month period. The difference between what Respondent was eligible to receive and what she did receive was correctly calculated by DHS as \$976.

DHS also presented evidence that Respondent's CDC benefit history (Exhibits 41-42). The history verified that Respondent received \$832.93 in CDC benefits over the period of 10/2009-12/2009. If Respondent's unreported income was properly budgeted, Respondent's income would have exceeded the CDC benefit income limit. Thus, the entire \$832.93 in issued CDC benefits for the period of 10/2009-12/2009 was over-issued.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that Respondent committed an intentional program violation. It is also found that DHS established a basis for debt collection for \$976 in FAP benefits and \$832.93 in CDC benefits for the period of 10/2009-12/2009.

The IPV disqualification and debt collection sought by DHS are AFFIRMED.


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

Date Signed: January 24, 2013

Date Mailed: January 24, 2013

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/hw

cc:

