

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No. 20121261  
Issue No. 3055; 4060  
Case No. [REDACTED]  
Hearing Date: November 30, 2011  
Wayne County DHS (15)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**HEARING DECISION**

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 November 30, 2011 from Detroit, Michigan. The Department was represented by [REDACTED], of the Office of Inspector General. 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).

**ISSUE**

The first issue is whether DHS established that Respondent committed an Intentional Program Violation (IPV) concerning receipt of Food Assistance Program (FAP) benefits.

The second issue is whether DHS established a basis for debt collection and/or recoupment based on an alleged overissuance of FAP benefits.

**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 FAP benefit recipient.
2. Respondent received a total of \$1,583 of FAP benefits from 12/2008 through 4/2009.
3. DHS subsequently learned that Respondent exclusively utilized the FAP benefits from 12/2008 through 4/2009 within the State of [REDACTED].

4. On 9/30/11, DHS requested an IPV and/or debt collection hearing against Respondent concerning \$1,583 of allegedly over-issued and fraudulently obtained FAP benefits.
5. DHS conceded that Respondent's FAP benefits from 4/2009 were expunged and that DHS only seeks to recoup FAP benefits from 12/2008-3/2009.

### **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).

Concerning whether an IPV occurred, the DHS regulations in effect at the time of the alleged overissuance shall be considered. Concerning whether DHS properly followed IPV and debt collection procedures, the regulations in effect as of 9/2011 (the month of the DHS hearing request) shall be considered. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

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.*

In the present case, DHS alleged that Respondent committed fraud by moving to Georgia and failing to report the change to DHS. The evidence established that Respondent left Michigan to permanently stay in Georgia prior to the period of overissuance. This was established by records which verified Respondent exclusively accessed FAP benefits in [REDACTED] beginning 11/3/2008 (see Exhibit 29). The benefits were continually accessed in [REDACTED] through 3/16/09.

It is less clear whether Respondent's failure to report a move to [REDACTED] was intentional. Generally, the intent for fraud is established by written documentation from a client which contradicts known facts. Alternatively, an intent of fraud could be established by verifying that a client received benefits for which the client knew or should have known they were not entitled. In the present case, DHS had no records from Respondent which asserted a false residence. DHS also did not establish that Respondent received a windfall of benefits, such as FAP benefits issued by multiple states.

From Respondent's perspective, benefits are benefits whether they are issued by Michigan or another state. A respondent would not necessarily be expected to know or care from which pot that benefits are paid. Though Respondent perhaps should have known to report a change in residence, it would not necessarily follow that Respondent had the intent to defraud by failing to report the change. Accordingly, it is found that DHS failed to establish that Respondent committed an IPV. It must then be considered whether an overissuance of FAP benefits occurred.

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.

For all programs, a person must be a Michigan resident. BEM 220 at 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.* This appears to be an extension of a definition of Michigan residency as it applies to other programs which states that a person is a resident if all of the following apply:

- Is not receiving assistance from another state.
- Is living in Michigan, except for a temporary absence.
- Intends to remain in the state permanently or indefinitely.

DHS group composition policy defines a temporary absence, in part, as one that is expected to last less than 30 days. *Id.* DHS interprets the group composition policy to apply to residency policy in that a person's absence from the State of Michigan establishes a permanent absence if the absence exceeds 30 days.

In the present case, DHS established that Respondent began exclusively accessing FAP benefits from Georgia from 11/3/08 through 3/16/09. It should not be assumed that Respondent intended to stay in [REDACTED] on 11/3/08. It is only clear that Respondent was not considered a Michigan resident 30 days after 11/3/08. Applying timelines for Respondent to report the change (10 days), DHS to process the change (10 days), and timely notice of the change (11 days or longer), the FAP benefit month that would have been affected by the change had it been timely reported would have been 2/2009. Accordingly, DHS established that an overissuance occurred for FAP benefits issued to Respondent for 2/2009 and 3/2009 only. DHS established that Respondent received \$463 in FAP benefits for each benefit month (see Exhibit 33). Accordingly, DHS established a basis for debt collection and/or recoupment in the amount of \$926.

### **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 IPV concerning

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FAP benefits issued from 12/2008-4/2009. It is further found that DHS failed to establish a basis for debt collection for FAP benefit months 12/2008, 1/2009 and 4/2009. The 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 and/or recoupment against Respondent for \$926 in FAP benefits over-issued from 2/2009 and 3/2009. The actions taken by DHS are PARTIALLY AFFIRMED.



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

Date Signed: 12/7/11

Date Mailed: 12/7/11

**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.

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