

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

IN THE MATTER OF:



Reg. No.: 201214584
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 12/2006-7/2007.
4. The Department's OIG indicates that the time period they are considering the fraud period is 12/2006-7/2007.
5. The Department has has not established that Respondent committed an IPV.
6. A notice of hearing was mailed to Respondent at the last known address and was 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 allegedly failing to report an alleged change in household members that would have reduced Respondent's FAP benefit eligibility. DHS presented documents (Exhibits 28-30) which tended to establish that one of Respondent's household members concurrently received FAP benefits from the State of Michigan and the Commonwealth of Pennsylvania during the timeframe of 12/2006-7/2007.

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

DHS did not furnish any documents completed by Respondent that alleged an inaccurate benefit factor. DHS did not furnish documents from Respondent that listed a household member who was known to not be part of Respondent's household at the time the document was made. Thus, the only basis for the alleged fraud could be 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 evidence presented 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.

For debt collection hearings, the client is sent a DHS-828, Notice of Debt Collection Hearing approximately three weeks prior to the hearing date. BAM 725 at 18. A copy of this notice is sent to the local office hearings coordinator. *Id.* If the DHS-828 is returned to MAHS by the Post Office as undeliverable, MAHS will dismiss the hearing. *Id.*

In the present case, the Notice of Hearing mailed to Respondent was returned due to "insufficient address". The present case involved an IPV issue with a secondary debt collection issue. Concerning the debt collection issue, no decision can be made due to the undeliverable Notice of Hearing. Accordingly, this issue is dismissed without prejudice. Because the dismissal is without prejudice, DHS may still request a hearing on the issue of debt collection at a future time.


DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to establish a basis for IPV and debt collection concerning FAP benefits. It is ordered that DHS:

- (1) cease and/or reverse any IPV actions taken against Respondent concerning the issues in the present case; and
- (2) supplement Respondent for any loss of benefits related to related IPV penalties.

The actions taken by DHS are PARTIALLY REVERSED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS may not proceed with a debt establishment of FAP benefits due to an undeliverable Notice of Hearing. The DHS hearing request with respect to the issue of debt establishment is DISMISSED WITHOUT PREJUDICE.


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

Date Signed: March 22, 2012

Date Mailed: March 22, 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

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cc:

