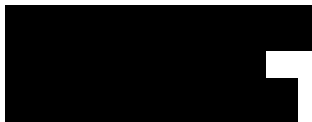


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201215507
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: March 14, 2012
Wayne County DHS (17)

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 claimant's request for a hearing. After due notice, a telephone hearing was held on March 14, 2012 from Detroit, Michigan. On behalf of Department of Human Services (DHS), [REDACTED] of the Office of Inspector General (OIG), appeared and testified. Respondent did not appear and the hearing 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. The first issue is whether DHS established that Respondent committed an Intentional Program Violation (IPV).
2. The second issue is whether DHS established a basis for debt collection against Respondent for an alleged overissuance of 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 Michigan FAP benefit recipient for the period of 4/2009-3/2010.
2. Respondent received FAP benefits from the State of [REDACTED] from 12/2006-12/2009 (see Exhibit 17).

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3. For the period of 4/2009-3/2010, Respondent accessed his FAP benefits for intermittent periods in Michigan and in [REDACTED].
4. During the period of 4/2009-3/2010, Respondent received \$2266 in FAP benefits from the State of Michigan.
5. On 11/3/11, DHS requested an administrative hearing alleging that Respondent committed an IPV and to establish a debt of \$2266 against Respondent for allegedly over-issued FAP benefits.

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 concurrently receiving FAP benefits from Michigan and [REDACTED]. Alternatively, DHS alleged that Respondent committed an IPV by using FAP benefits received from Michigan during a period when Respondent did not live in Michigan.

DHS presented an email print-out (Exhibit 17) which stated that Respondent and his son received FAP benefits from the State of Nebraska from 12/2006-12/2009. The email appeared to be from a State of [REDACTED] a employee, based on the email address domain name [REDACTED]. The email appeared authentic and reliable. A second document (Exhibit 11) from a computer match also tended to verify that Respondent received FAP benefits from [REDACTED] though the FAP start date was noted as 10/2009. The start date may refer to a benefit period rather than the actual start date of FAP benefits.

Concurrently receiving FAP benefits from multiple states is persuasive evidence of fraud by Respondent. Respondent failed to appear for the hearing to refute the fraud allegation. It is found that DHS established an IPV by Respondent due to the concurrent receipt of FAP benefits.

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.

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A finding of IPV implies an over-issuance of benefits due to the IPV. It must be determined how much of an over-issuance occurred so that the amount may be repaid.

DHS alleged that all FAP benefits issued from 4/2009-3/2010 were over-issued. The evidence only established that Respondent concurrently received FAP benefits from Michigan and Nebraska from 4/2009-12/2009. If the computer match start date is given preference over the email, then DHS only established concurrently issued benefits from the period of 10/2009-12/2009.

DHS contended that the OI period may be extended through 3/2010 because Respondent continued to use FAP benefits outside of Michigan through 3/2010. The contention presumably relied on a DHS regulation which states that a client is considered absent from a FAP benefit household if the absence lasts longer than 30 days (see BEM 212).

Respondent's FAP benefit usage history was submitted (Exhibits 12-16 and 26-31). The history shows intermittent FAP benefit usage by Respondent in Michigan and [REDACTED] and other states. Respondent accessed FAP benefits exclusively from outside of Michigan from 2/18/10-4/8/10 (see Exhibits 30-31). Applying the 30 days absence policy is more complicated than looking back in retrospect to see how long a client is absent from Michigan.

Merely because a person is absent from a household for more than 30 days does not necessarily lead to a conclusion that a person expected the absence to last for more than 30 days. It is plausible that Respondent expected to be absent for approximately 30 days but after 30 days found himself unable to return. If a change in residence was timely reported to DHS, the result would likely be a delay of approximately two months before a FAP benefit change would become effective. This takes into consideration that DHS specialist have additional days to initiate a change (see BEM 505) and that additional days are required before a change is effective (see BAM 220).


Based on the presented evidence, DHS established an over-issuance of FAP benefits issued between 4/2009 through 12/2009. The amount of OI is found to be \$1666 (see Exhibits 18-19).

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 IPV for FAP benefits over-issued for the period from 4/2009-12/2009. It is further found that DHS established a basis for debt collection for \$1666 for the over-issuance stemming from the IPV. DHS may proceed with implementation of IPV and debt establishment against Respondent in accordance with this decision.

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The DHS request is PARTIALLY REVERSED.


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

Date Signed: March 22, 2012

Date Mailed: March 22, 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 Claimant 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.

Claimant 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 claimant:
 - 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 to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/ hw

cc: 

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