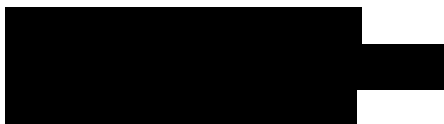


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No. 20122578
Issue No. 3055; 4060
Case No. [REDACTED]
Hearing Date: November 30, 2011
Wayne County DHS (55)

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 from 12/2005-7/2006.
2. From 12/2005-7/2006, Respondent's spouse worked for [REDACTED] and received various weekly income wage payments (see Exhibits 12-32).

3. From 12/2005-7/2006, DHS was unaware of Respondent's spouse's employment and did not budget any employment income for Respondent's spouse in the determination of Respondent's FAP benefit eligibility.
4. From 12/2005-7/2006, Respondent received \$4048 in FAP benefits (see Exhibit 41).
5. After budgeting Respondent's spouse's employment income, DHS determined that Respondent should have received \$396 in FAP benefits from 12/2005-7/2006.
6. On 10/3/11, DHS requested an IPV and/or debt collection hearing against Respondent concerning \$3652 in allegedly over-issued and fraudulently obtained 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).

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 failing to timely report her spouse's employment wages. The evidence tended to establish that Respondent was aware of reporting responsibilities (based on the signature on the Assistance Application which is an acknowledgement of those responsibilities), that Respondent received a windfall of FAP benefits due to the failure by DHS to factor employment wages for Respondent's spouse and that there was no impairment that would prevent Respondent from fulfilling any reporting requirements.

It is less clear whether DHS established that Respondent intentionally failed to report the income to DHS. Generally, intent to defraud is established by written documentation from a client which contradicts known facts. DHS conceded having no such documentation.

DHS presumed that the failure by DHS to budget employment income in the present case was the fault of Respondent. DHS did not present any evidence that established the presumption. Though it is possible that Respondent received a windfall of FAP benefits based on a failure to report income, the windfall could have also been a result of negligence by DHS. As there was no evidence presented to establish that Respondent intentionally failed to report employment income, 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.

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.

DHS presented documentation from Respondent's spouse's employer establishing that her spouse began employment on 10/22/05 with the first pay issued 10/25/05 (see Exhibit 12). It was also established that her spouse received wage income through 7/2006, the end of the OI period. It was further established that DHS did not budget Respondent's spouse's income in issuing Respondent's FAP benefits from 12/2005-7/2006. DHS budgets verified that the OI amount was \$3652. It is found that DHS established a basis for recoupment and/or debt collection for \$3652 in over-issued FAP benefits.

It should be noted that DHS is seeking to establish a debt against Respondent and Respondent's spouse (see Reg. # 20122580). DHS may not seek more than the \$3652 between Respondent and Respondent's spouse but may pursue debt collection against Respondent and her spouse up to the \$3652 between them.

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 FAP benefits issued from 12/2005-7/2006. 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 and/or recoupment against

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Respondent for \$3652 in FAP benefits over-issued from 12/2005-7/2006. DHS is limited to recoupment and/or debt collection between Respondent and her spouse (see Reg. # 20122580) for a total of \$3652. The actions taken by DHS are PARTIALLY AFFIRMED.



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

Date Signed: 12/8/11

Date Mailed: 12/8/11

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.

CG/hw

cc:

