

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

IN THE MATTER OF:



Reg. No.: 201233836
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: June 6, 2012
County: Newaygo DHS

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 June 6, 2012 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). 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

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

The second issue is whether DHS established that 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. Over the period of 4/2007-10/2007, Respondent was an ongoing FAP benefit recipient.
2. Over the period of 4/2007-10/2007, Respondent received employment income from Meyer's Motor Transportation.
3. Over the period of 4/2007-10/2007, Respondent received FAP benefits totaling \$1092.

4. Over the period of 4/2007-10/2007, Respondent's FAP benefit eligibility did not factor Respondent's employment income.
5. Had Respondent's employment income been factored over the period of 4/2007-10/2007, Respondent would have not been eligible for FAP benefits.
6. On 2/15/02, DHS requested a hearing to establish that Respondent committed an IPV by receiving an overissuance of \$1092 in FAP benefits over the period of 4/2007-10/2007.

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 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.*

There is no evidence that Respondent signed a DHS-826 or DHS-830 conceding that an IPV occurred. 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 contended that Respondent intentionally failed to report employment income resulting in an overissuance of FAP benefits for Respondent. The basis for the DHS contention was the mere issuance of FAP benefits from 4/2007-10/2007 which failed to factor Respondent's employment income.

A failure to factor income in a FAP benefit determination could reasonably be explained by a client intentionally failing to report income to DHS. The failure to budget income in a FAP determination could also be the result of DHS' own negligence. Without evidence beyond establishing that the income was not budgeted, neither scenario is necessarily more likely to have occurred than the other. DHS did not present any written statement from Respondent which stated that he was not employed during a period when Respondent was known to be employed. DHS also could not provide evidence of a verifiable reporting system which would likely place the blame on Respondent for the failure to report income.

Based on the presented evidence, DHS failed to establish that Respondent intentionally failed to report income. Accordingly, it is found that DHS failed to establish that Respondent committed an IPV. Though DHS failed to establish that Respondent committed an IPV, it must still be determined whether an overissuance of 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. Establishing whether DHS or Respondent was at fault for the OI is of no importance because DHS may seek to recoup the amount in either scenario.

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 over-issuance FAP benefit budgets (Exhibit 4) to support that an OI of FAP benefits occurred. There was some concern that the OI budgets credited Respondent for paying a mortgage but failed to credit Respondent for a utility obligation. However, Respondent did not appear for the hearing to validate the concern. The budgets established that Respondent received an over-issuance of \$1092 in FAP benefits over the period of 4/2007-10/2007. Accordingly, DHS established a basis for debt collection against Respondent in the amount of \$1092.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established a basis for debt collection for \$1092 in FAP benefits over-issued to Respondent for the period of 4/2007-10/2007. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed establish that Respondent committed an Intentional Program Violation stemming from an over-issuance of FAP benefits from 4/2007-10/2007. The actions taken by DHS are PARTIALLY DISMISSED.



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

Date Signed: June 13, 2012

Date Mailed: June 13, 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 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:

