

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201239577
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: June 6, 2012
County: Genesee DHS (02)

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 for the Office of Inspector General (OIG). 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 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. Respondent received ongoing FAP benefits from the State of Michigan over the period of 1/2010-4/2011.
2. For the period of 2/5/11-4/10/11, Respondent spent the Michigan FAP benefit issuances exclusively within the State of [REDACTED] (see Exhibits 37-38).
3. For the period of 11/2010-4/2011, Respondent also received FAP benefits from the State of New York (see Exhibits 27-33).

4. Over the period of 11/2010-4/2011, Respondent received FAP benefits totaling \$973 from the State of Michigan.
5. Over the period of 1/2011-4/2011, Respondent received \$4028 in Medical Assistance (MA) benefits from the State of [REDACTED].
6. Over the period of 1/2011-4/2011, Respondent also received Medicaid through [REDACTED] (see Exhibit 28).
7. On 3/16/12, DHS requested a hearing to establish that Respondent committed an IPV by receiving FAP benefits concurrently from the State of [REDACTED] and the State of [REDACTED].
8. The Notice of Hearing mailed to Respondent was returned as undeliverable (see Exhibit 43).

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).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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. 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.

For MA hearings, OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located. BAM 720 at 19. For FAP hearings, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable. In the present case, it is not known whether DHS received undeliverable correspondence sent to Respondent. It is known that the Notice of Hearing was returned as undeliverable.

The Michigan Administrative Code (MAC) discusses the issue of an undeliverable Notice of Hearing. An intentional program violation concerning FIP benefits hearing will be conducted with or without the individual or authorized representative present if the hearing notice is not returned by the post office as undeliverable. MACR 400.3130 (5). The comparable MAC section for FAP benefits has no such rule. Thus, the law and DHS policy tends to support that an IPV hearing concerning FAP benefits may proceed even when a Notice of Hearing is returned as undeliverable.

A person cannot receive FAP benefits in more than one state for any month. BEM 222 at 2. Out-of-state benefit receipt or termination may be verified by one of the following:

DHS-3782, Out-of-State Inquiry, letter or document from other state or collateral contact with the state. *Id.* at 3.

DHS contended that Respondent intentionally violated DHS FAP policy by concurrently receiving FAP benefits from two different states, Michigan and [REDACTED]. DHS established Respondent was issued a total of \$973 in FAP benefits from the State of Michigan over the period of 11/2010-4/2011 (see Exhibit 34). DHS also established that Respondent concurrently received FAP benefits from the State of [REDACTED] (see Exhibits 27-33). It is found that Respondent concurrently received FAP benefits from more than one state.

Verification that Respondent concurrently received FAP benefits from multiple states, by itself, is sufficient evidence to establish an IPV by Respondent. Respondent failed to appear for the hearing so no evidence was presented to refute the DHS evidence or to possibly excuse Respondent's actions. It is found that DHS established an IPV by Respondent.

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 was not disputed that Respondent concurrently received FAP benefits from multiple states; this is not enough to justify a ten year FAP benefit disqualification. In addition, DHS must establish that Respondent made fraudulent statements concerning identity or residence; no such evidence was presented. Respondent's fraud involved a failure to report a change in residency. A failure to report information is not the equivalent of a fraudulent statement; one is passive fraud and the other is active fraud. DHS imposes the ten year penalty only for active fraud. It is found that Respondent did not make a fraudulent statement or representation regarding identity or residency in order to receive multiple FAP benefits simultaneously. Accordingly, a ten year disqualification is inappropriate.

The standard disqualification period is used in all instances except when a court orders a different period. BAM 720 at 13. DHS is to apply the following disqualification periods to recipients determined to have committed IPV: one year for the first IPV, two years for the second IPV and lifetime for the third IPV. *Id.* Respondent's failure to report a change in state residency in order to collect FAP benefits was found to be fraud but did not merit a 10 year FAP benefit disqualification. DHS is entitled to impose the standard one year IPV disqualification for Respondent's first IPV.

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. The present case concerns an alleged OI of \$800. 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.

To establish a debt against clients who are no longer receive benefits, DHS may request a hearing for debt establishment. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 at 13. Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

For debt collection hearings, SOAHR (now LARA, Department of Licensing and Regulatory Affairs) schedules the hearing. BAM 725 at 16. The client is sent a DHS-828, Notice of Debt Collection Hearing approximately three weeks prior to the hearing date. *Id.* A copy of this notice is sent to the local office hearings coordinator. If the DHS-828 is returned to SOAHR by the post office as undeliverable, SOAHR will dismiss the hearing. *Id.*

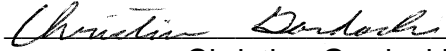
In the present case, a DHS-827, Notice of Disqualification Hearing/Request for Waiver of Disqualification Hearing was mailed to Respondent and returned as undeliverable. The DHS-827 serves as the notice for the hearing. The policy concerning debt collection hearings would logically apply to the debt collection aspect of IPV hearings. Thus, no debt collection may be established against Respondent because the Notice of Hearing was returned as undeliverable. Accordingly, the debt collection actions against Respondent are dismissed without prejudice. Because the dismissal is without prejudice, DHS may request a hearing on the same issue in the future.

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 intentional program violation stemming from a concurrent receipt of FAP benefits from multiple states. 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 Respondent failed to receive notice of a debt collection action concerning allegedly over-issued FAP and MA benefits.

The actions taken by DHS are PARTIALLY DISMISSED WITHOUT PREJUDICE.


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

Date Signed: June 18, 2012

Date Mailed: June 18, 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:

