

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

IN THE MATTER OF:



Reg. No.: 201273490
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: October 17, 2012
County: Oakland DHS (03)

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 October 17, 2012 from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent for 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)(3).

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. Over the period of 9/1/2011-4/30/2012, Respondent was an ongoing FAP benefit recipient through the State of Michigan.
2. Over the period of 8/21/11-5/12/12, Respondent spent the Michigan issued FAP benefits in Florida (see Exhibits 30-31).
3. Over the period of 9/1/2011-4/30/12, Respondent received FAP benefits totaling \$1401.

4. On 9/4/12, DHS requested a hearing to establish that Respondent committed an IPV by receiving an overissuance of \$1401 in FAP benefits over the period of 9/2011-4/2012.

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 (8/2012), p. 3.

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.

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 (1/2011), p. 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. *Id.* 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).

A precondition of receiving FAP benefits is completing and signing an Assistance Application. In the fine print on the application's signature page, it is written that a client's signature is an agreement that the client read and understands the rights and responsibilities section of the application. The rights and responsibilities section informs clients of various policies including the requirement to report changes which affect benefit eligibility within 10 days. It is presumed that Respondent signed an Assistance Application thereby acknowledging an understanding of the reporting requirements. There was also no evidence that Respondent had impairments which would affect Respondent's reporting responsibilities. Thus, the only issue left in determining if an IPV occurred is whether Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination. Specifically, DHS contended that Respondent committed fraud by failing to report a change in state residency resulting in improperly issued FAP benefits over the period of 9/1/2011-4/30/12.

To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220 (1/2012), p. 1. For FAP benefits, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. *Id.* Eligible persons may include persons who entered the state with a job commitment or to seek employment or students (this includes students living at home during a school break.) *Id.*

DHS presented a Lexis/Nexis report (Exhibits 32-46). The report listed addresses for Respondent in Michigan and outside of Michigan during the alleged over-issuance period. Having a Michigan address during a time DHS alleged that Respondent was not a Michigan resident only tends to disprove the DHS contention. However, the Lexis/Nexis report is not considered fool-proof; it can only conjecture where Respondent lived based on available public information. For example, the report might have assumed that Respondent lived in Michigan until the time Respondent changed addresses with another state's Secretary of State; the reality is that persons could easily leave Michigan without ever updating their identification card, but that does not make these people continuing residents of the state that they left.

DHS presented Respondent's FAP benefit spending history (see Exhibits 26-28). The history verified that Respondent exclusively spent State of Michigan issued FAP

benefits in ██████ over the period of 8/21/11-5/12/12. Respondent's exclusive FAP benefit usage in ██████ for an eight month period is persuasive evidence that Respondent was not a Michigan resident for at least some of the period when the FAP benefits were accessed in ██████. Of all the scenarios that would explain out-of-state usage, the most probable explanation is that Respondent lived outside of Michigan.

It must then be considered when Respondent lost Michigan residency. A loss of Michigan residency does not necessarily coincide with leaving the State of Michigan. For example, DHS has no known policies preventing people from traveling outside of Michigan, though there is a DHS policy concerning the duration a person can be absent from a household before the person is considered out of the household. FAP benefit group composition policy states that clients absent from a home for longer than 30 days are not considered temporarily absent. BEM 212 (9/2010), p. 2; in other words, if a person is out of a home longer than 30 days, they are no longer in the home. The policy is not necessarily directly applicable to residency, but it would seem reasonable to allow clients a 30 day period before residency in another state is established; the 30 day period beginning with a client's first out-of-Michigan food purchase. Based on the presented evidence, Respondent is found to not be a Michigan resident as of 9/20/11, 30 days after Respondent first accessed FAP benefits outside of Michigan.

Though Respondent is found to not be a Michigan resident as of 9/20/11, this does not prove that an IPV was committed. DHS assumed that Respondent purposely failed to report a change in residency to continue receiving FAP benefits from Michigan.

It is plausible that Respondent reported a change in residency but that DHS failed to act on Respondent's reporting. DHS was not able to present any written statement from Respondent which claimed residency in Michigan during a period when Respondent was known to be outside of Michigan. DHS also could not provide evidence of a verifiable reporting system that established the failure to change Respondent's address was the fault of Respondent. This is somewhat supportive of finding that Respondent did not commit fraud.

DHS did not allege that Respondent concurrently received FAP benefits from multiple states. Because there is no evidence that Respondent received FAP benefits from more than one state, there is no apparent motive for Respondent to commit fraud; this presumes that Respondent could have received FAP benefits from the state in which Respondent resided. Without evidence of a financial incentive, a contention of fraud is much less persuasive.

Based on the presented evidence, DHS failed to establish that Respondent intentionally failed to report a change in residency. Accordingly, it is found that DHS failed to establish that Respondent committed an IPV. Even though DHS failed to establish that Respondent committed an IPV, it must still be determined whether an overissuance of benefits occurred and whether DHS may pursue debt collection actions to recoup those benefits.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (1/2011), p. 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.*

For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (4/2011), p. 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.

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. *Id.*, p. 7. The present case concerns an alleged OI of \$1401.

Establishing whether DHS or Respondent was at fault for the OI is of no importance to the collectability of the over-issuance because DHS may seek to recoup the amount in either scenario; determining which party is at fault may affect the over-issuance period.

There is no evidence that Respondent is at fault for the over-issuance. It should be noted that Respondent's use of FAP benefits outside of Michigan is unconvincing evidence of fault because there is no reason for a client to believe that such use is improper. It is found that the over-issuance was due to DHS error.

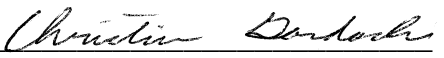
For over-issuances caused by DHS error, the amount is affected by the full standard of promptness (SOP) for change processing and the negative action period. BAM 705 (7/2012), pp. 4-5. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (9/2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Other changes must be reported within 10 days after the client is aware of them. *Id.* For non-income changes, DHS is to complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs ten days after the change is reported. *Id.*

DHS alleged that FAP benefits were over-issued to Respondent over the period of 9/2011-4/2012 due to Respondent's loss of Michigan residency. It was found above that Respondent was not a Michigan resident as of 9/20/11. Allowing 10 days for reporting of the change and 10 days to calculate the benefit month affected results in a date of 10/10/11 and an effective benefit month of 11/2011. It is found that the FAP benefit over-issuance period is from 11/2011-4/2012. DHS established that Respondent received a total of \$1059 in FAP benefits from the State of Michigan over the period of 11/2011-4/2012 (see Exhibits 47-48). Accordingly, DHS established a basis of debt collection for \$1059 against Respondent.

DECISION AND ORDER

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 9/2011-4/2012. It is further found that DHS failed to establish debt collection against Respondent for FAP benefits issued from 9/2011-10/2011. 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 established a basis for debt collection for \$1059 in over-issued FAP benefits for the period of 11/2011-4/2012. The actions taken by DHS are PARTIALLY AFFIRMED.


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

Date Signed: 10/26/2012

Date Mailed: 10/26/2012

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

201273490/ CG

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

CG/hw

cc:

