

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201321566
Issue No.: 1052, 2006, 3055
Case No.: [REDACTED]
Hearing Date: March 5, 2013
County: Eaton

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge for an Intentional Program Violation hearing pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request. After due notice, a hearing was held on March 5, 2013. Respondent appeared and testified by telephone.

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received an [REDACTED] over-issuance of Family Independence Program (FIP) benefits between January 1, 2012 and February 29, 2012 which the Department is entitled to recoup?

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a \$ [REDACTED] over-issuance of Medical Assistance (MA) benefits between January 1, 2012 and July 31, 2012 which the Department is entitled to recoup?

Whether Respondent received duplicate Food Assistance Program (FAP) benefits from Michigan and Florida and whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits between January 1, 2012 and July 31, 2012 which the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

(1) Respondent was an ongoing recipient of Family Independence Program (FIP), Medical Assistance (MA), and Food Assistance Program (FAP) benefits in Michigan.

(2) On November 1, 2011, Respondent began using his Michigan Food Assistance Program (FAP) Electronic Benefit Transfer (EBT) card in Florida.

(3) On November 7, 2011, Respondent sent a letter to 56th Circuit Court of Eaton County reporting he had moved to Florida. Respondent marked that a blind copy was sent to Eaton County DHS. Other than Respondent's name, the letter did not have any DHS specific identifying information.

(4) On January 5, 2012, a Verification Checklist (DHS Form 3503) was sent to Respondent at his Michigan address of record. The Department was requesting verification of Respondent's residential address for determining his eligibility for Family Independence Program (FIP) benefits. The verification was due by January 17, 2012. The Verification Checklist (DHS Form 3503) stated that if the verification was not provided Respondent's benefits may be denied, decreased or cancelled.

(5) On February 6, 2012, a Notice of Case Action (DHS-1605) was sent to Respondent at his Michigan address of record stating his Family Independence Program (FIP) closed on March 1, 2012.

(6) On March 16, 2012, the Social Security Administration sent a letter to Respondent in Florida which stated he was found eligible for Supplemental Security Income (SSI) beginning April 2011. The letter specifically stated that \$ [REDACTED] of Respondent back pay was paid to Michigan Department of Human Services.

(7) On April 30, 2012, the Florida Department of Children and Families sent Respondent a Notice of Case Action which stated he was not eligible for Food Stamps due to excess income.

(8) On July 13, 2012, a Michigan DHS case worker called Respondent's cell phone number and spoke to him. The case worker asked if Respondent had moved to Florida and he stated yes.

(9) On January 3, 2013, the Office of Inspector General submitted the agency request for hearing of this case.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1997 AACRS R 400.3101-3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) 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). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACRS R 400.3001-3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

In this case, the Department has requested a disqualification hearing to establish an over-issuance of benefits as a result of an Intentional Program Violation (IPV) and the Department has asked that Respondent be disqualified from receiving benefits. Department policies provide the following guidance and are available on the internet through the Department's website.

BAM 720 INTENTIONAL PROGRAM VIOLATIONS

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and over-issuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

BAM 700 explains OI discovery, OI types and standards of promptness. BAM 705 explains agency error and BAM 715 explains client error.

DEFINITIONS

All Programs

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.

IPV is suspected when there is clear and convincing 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.

Clear and convincing evidence is evidence that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct, and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995), quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 434 (1987).

The evidence in this record does not constitute clear and convincing evidence that Respondent intentionally failed to report his move to Florida or intentionally gave incomplete or inaccurate information to the Michigan Department of Human Services.

The evidence in this record does support a conclusion that any benefit over issuance prior to January 17, 2012 was caused by Client error. However, the January 2, 2012 Verification Checklist (DHS Form 3503) shows that the Department was aware of a potential over-issuance due to Respondent’s physical residence. Department of Human Services Bridges Administration Manual (BAM) 705 Agency Error Over-Issuances (2013) indicates that any over-issuance after January 17, 2012 were due to Agency Error.

The April 30, 2012, Florida Department of Children and Families Notice of Case Action sent to Respondent stated he was not eligible for Food Stamps due to excess income. This evidence refutes the Individual Eligibility History page submitted by the Department (Page 55) on the issue of duplicate receipt of benefits. The evidence in this record is insufficient to establish that Respondent received Food Assistance Program (FAP) from Michigan and Florida concurrently.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department has not established by clear and convincing evidence that Respondent received Food Assistance Program (FAP) from Michigan and Florida concurrently or committed an Intentional Program Violation (IPV) which resulted in an over-issuance of benefits that the Department is entitled to recoup.

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

_____/s/
Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 7, 2013

Date Mailed: May 7, 2013

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.

GFH/nr

cc:

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