

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

**IN THE MATTER OF:**



Reg. No.: 2013-49278  
Issue No.: 3052  
Case No.:   
Hearing Date: October 14, 2013  
County: Wayne DHS (41)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

Upon the request for a hearing by the Department of Human Services (DHS), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on October 14, 2013 from Detroit, Michigan. Regulation Agent for the Office of Inspector General (OIG), testified on behalf of DHS. 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 400.3178(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.

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On /10, Respondent submitted an Assistance Application (Exhibits 15-25) to DHS requesting Food Assistance Program (FAP) benefits.
2. DHS subsequently approved Respondent's FAP eligibility.
3. Respondent subsequently received employment income over the period of /10-/10 (see Exhibit 13).

4. DHS processed Respondent's FAP benefit eligibility over the period of [REDACTED]/2010-[REDACTED]/2010, in part, based on \$0 employment income for Respondent.
5. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$2553 in allegedly over-issued FAP benefits for the period of [REDACTED]/2010-[REDACTED]/2011.

### **CONCLUSIONS OF LAW**

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services 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 (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.

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).

DHS regulations list the requirements for an IPV. A 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. see also 7 CFR 273(e)(6).

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.* Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

DHS alleged that Respondent intentionally failed to report the starting of employment income resulting in an overissuance of FAP benefits for Respondent. The basis for the DHS contention was that Respondent's FAP eligibility for the period of [REDACTED]/2010-[REDACTED]/2011 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 employment income was not budgeted, neither scenario is significantly more likely to have occurred than the other. DHS did not present a written statement from Respondent which claimed a lack of employment during a period when Respondent was known to be employed. DHS also could not provide evidence of a verifiable reporting system that established the failure to budget employment income was the fault of Respondent.

Based on the presented evidence, DHS failed to clearly and convincingly establish that Respondent intentionally failed to report income. 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.

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.*

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. Establishing whether DHS or Respondent was at fault for the OI is of

no importance to the collectability of over-issued FAP benefits because DHS may collect the over-issuance in either scenario. Determining which party is at fault may affect the over-issuance period.

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. For client errors, there is no entitlement to factor reporting and processing timelines into the overissuance determination.

DHS established presented documents (Exhibits 12-13) obtained from Respondent's previous employer. The documents verified that Respondent received over \$15,000 between █/2010 through █/2011. DHS also verified through overissuance budgets (Exhibits 26-33) that DHS did not factor any of Respondent's employment income resulting in an apparent overissuance of \$2553 for the period of █/2010-█/2011.

In the IPV analysis, it was found that DHS failed to establish fraud by Respondent; that was based on a clear and convincing standard. The analysis noted that an overissuance could have been caused by DHS error and that this was not a significantly more likely scenario than a client's failure to report. Respondent failed to appear for the hearing to present any evidence of reporting; this is supportive in finding that the overissuance is probable client caused. The relatively large amount of overissuance (\$2553) and lengthy timeframe (seven months) also are suggestive that Respondent knew or should have known that an overissuance occurred. Based on a preponderance of evidence standard, it is found that Respondent is the cause for the FAP benefit overissuance.

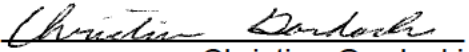
DHS established that Respondent received \$2569 in FAP benefits for the period of █/2010-█/2011. DHS also established that Respondent would have received \$16 in FAP benefits over the same period had Respondent's employment income been factored. It is found that Respondent received an overissuance of \$2553 in FAP benefits over the period of █/2010-█/2011 due to a failure to report employment income.

### **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 █/2010-█/2011. 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 that Respondent received an overissuance of \$2553 in FAP benefits for the period of █/2010-█/2011.

The hearing request of DHS is PARTIALLY AFFIRMED.

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

Date Signed: 11/6/2013

Date Mailed: 11/6/2013

**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.

CG/hw

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