

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-50600
Issue No.: 3052
Case No.: [REDACTED]
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. [REDACTED] 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 [REDACTED]/09, Respondent completed and signed an Assistance Application (Exhibits 10-24).
2. Respondent's application reported a residential address within Michigan.
3. On an unspecified date, DHS approved Respondent for FAP benefits.

4. Beginning [REDACTED]/10, Respondent began accessing FAP eligibility in [REDACTED] and continued doing so through [REDACTED]/12.
5. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$4200 in allegedly over-issued FAP benefits for the benefit months of [REDACTED]/2010- [REDACTED]/2012.

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).

It should be noted that a Notice of Hearing was mailed to Respondent and returned by the United States Post Office as undeliverable. An IPV hearing involving FAP benefits may proceed despite an undeliverable Notice of Hearing. 7 C.F.R. 273.16 (e) (3).

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 also define 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 established that Respondent signed 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 Information Booklet section of the application. The Information Booklet informs clients of various policies including the requirement to report changes that affect benefit eligibility within 10 days. Respondent's application signature verifies that Respondent was aware of the obligation to report changes in residency to DHS.

The burden of proof to establish that a client did not or could not understand reporting requirements would properly rest with a client. Respondent did not appear for the hearing to present any evidence of being able to fulfill reporting requirements. Thus, the only questionable IPV requirement is whether Respondent intentionally failed to report information to gain a windfall of benefits.

DHS alleged Respondent intentionally failed to report a change in residency to DHS resulting in improper FAP benefit issuances. 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.*

A requirement to the IPV claim is that Respondent lost Michigan residency. Based on DHS policy, the only clearly defined requirement is "living in Michigan".

No evidence was offered to suggest that Respondent was not a Michigan resident on the date he signed an Assistance Application. DHS contended that Respondent lost Michigan residency when he presumably moved and began accessing FAP benefits outside of Michigan.

A loss of Michigan residency does not necessarily coincide with leaving the State of Michigan. DHS has no known policies banning travel or FAP benefit usage 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 barring evidence suggesting otherwise, a 30 day period seems to be a reasonable time to allow before residency in another state is established; the 30-day period beginning with a client's first out-of-Michigan food purchase.

It was established that Respondent exclusively accessed FAP benefits in [REDACTED] for an approximate 23-month period. It is possible that Respondent maintained Michigan residency while buying food out-of-state. It is possible that Respondent lived outside of Michigan but always intended to return to Michigan. It is possible that Respondent lived in Michigan and only happened to purchase food outside of Michigan. Though there are possibilities that Respondent was a Michigan resident between 8/2010 and 4/2012, it is improbable.

Consideration was given to the proximity between Respondent's reported address and the state in which FAP benefits were accessed. Respondent reported an address known to be several hours from [REDACTED]. If the address and state were in closer proximity, a loss of residency becomes less likely. The ample distance is supportive of a finding that Respondent gave up Michigan residency.

Based on the presented evidence, Respondent is found to not be a Michigan resident as of 7/21/10, 30 days after Respondent first accessed FAP benefits outside of Michigan. Though Respondent is found to not be a Michigan resident as of 7/21/10, the finding 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.

DHS presented two Redeterminations (Exhibits 25-32) signed by Respondent. A Redetermination is a DHS mailed document used to update information on a client's case prior to the certification of a new benefit period. The documents were signed by Respondent on 7/8/10 and 7/24/11; both dates falling within a period when Respondent

exclusively accessed FAP benefits outside of Michigan. Both Redeterminations were mailed to a Michigan address and returned by Respondent. Neither Redetermination referenced a change in address. Respondent reported that he was homeless on the Redetermination he signed on 7/24/11. The most logical explanation for Respondent's failure to report a Tennessee residence is fraud.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (12/2011), 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.*, p. 5. Client and DHS error OIs are not pursued if the estimated OI amount is less than \$125 per program. *Id.*, p. 7. It was established that the error was client-caused.


DHS established that Respondent received \$4200 in FAP benefits over the period of 8/2010-4/2012. It was established that Respondent was not a Michigan resident for the entire period of time. It is found that DHS established an overissuance of benefits for \$4200.

Based on the presented evidence, it is found that DHS established a basis for IPV against Respondent for \$4200 in over-issued FAP benefits issued for the period of 8/2010-4/2012. DHS also seeks to impose a one year disqualification period against Respondent.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720 (2/2013), p. 12. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. *Id.*, p. 13. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. *Id.*, p. 16.

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. DHS established a basis to impose a 1 year disqualification against Respondent. It is further found that DHS established an overissuance of \$4,200 in over-issued FAP benefits for the period of 8/2010-4/2012. The IPV request by DHS is **AFFIRMED**.


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

2013-50600/CG

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

cc:

