

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

IN THE MATTER OF:



Reg. No.: 2013-59060
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]/10, Respondent completed an Assistance Application (Exhibits 11-25) (Spanish version) which listed a residential address within Michigan.
2. DHS subsequently approved Respondent's FAP and MA eligibility.
3. On [REDACTED]/11, DHS mailed Respondent a Redetermination to Respondent's reported residence.

4. The Redetermination was an English language version.
5. On [REDACTED] 11, Respondent submitted the Redetermination (Exhibits 26-29) and reported no change in residence.
6. Beginning [REDACTED]/11, Respondent accessed FAP benefits exclusively within Florida and continued doing so through [REDACTED] 12.
7. Over the benefits months of [REDACTED]/2011-[REDACTED]/2012, DHS issued \$1679 in FAP benefits to Respondent.
8. Over the benefits months of [REDACTED]/2011-[REDACTED]/2012, DHS issued \$1679 in MA benefits to Respondent.
9. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$1767 in allegedly over-issued FAP benefits and \$1679 in allegedly over-issued MA benefits.

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 a change in residency to DHS resulting in improper FAP and MA benefit issuances. To determine whether an IPV occurred, the DHS policy on residence should be undertaken.

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.*

For MA benefits, an individual is a Michigan resident if either of the following apply:

- The individual lives in Michigan, except for a temporary absence, **and** intends to remain in Michigan permanently or indefinitely.
- The individual or a member of the MA fiscal group has entered the state of Michigan for employment purposes, and
 - Has a job commitment, or
 - Is seeking employment. *Id.*

DHS presented Respondent's FAP benefit transaction history (Exhibits 31-38). The history verified that Respondent exclusively accessed FAP benefits in █████ over the period █████/11 through █████/12. 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 his food outside of Michigan. Though there are possibilities that Respondent was a Michigan resident between █████/2011 and █████/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 █████. 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.

There may be plausible explanations for Respondent's FAP benefit use outside of Michigan for a period over nine months. The plausible explanations lessen when factoring Respondent's submission to DHS on █████/11 which claimed Michigan residency. Fraud is the most probable explanation for Respondent reporting a Michigan address in the midst of a nine month period of FAP benefit usage outside of Michigan.

Consideration was given to Respondent's completion of a Spanish language application and a finding of fraud based on Respondent's response to a form written in English. The Redetermination was completed in clear language by Respondent and showed no particular signs of Respondent failing to understand any of the questions. Based on the presented evidence, it is found that Respondent committed an intentional program violation.

The standard disqualification period is used in all instances except when a court orders a different period. *Id.*, p. 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.* DHS established a basis for a one year disqualification against Respondent.

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.*

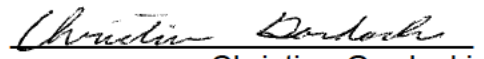
DHS may pursue an OI whether it is a client caused error or DHS error. *Id.* at 5. Client and DHS error OIs are not pursued if the estimated OI amount is less than \$125 per program. *Id.*, p. 7. The present case concerns alleged over-issuances of \$1767 in FAP benefits and \$1679 in MA benefits. Establishing 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.

DHS established that Respondent received \$1767 in FAP benefits and \$1679 in MA benefits (see Exhibits over the period of [REDACTED]/2011-[REDACTED]/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 \$3446. Based on the presented evidence, it is found that DHS established a basis for IPV against Respondent for \$3446 in over-issued FAP and MA benefits issued for the period of [REDACTED]/2011-[REDACTED]/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. DHS established a basis for a one year FAP benefit disqualification.

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 \$3446 in over-issued FAP and MA benefits for the period of [REDACTED]/2011-[REDACTED]/2012. The IPV request by DHS is **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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