

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-59262
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. Carolyn Sartor, 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]/11, Respondent completed an Assistance Application (Exhibits 10-28) and reported a residential address within Michigan.
2. DHS subsequently approved Respondent's FAP eligibility.
3. Beginning [REDACTED]/11, Respondent accessed FAP benefits exclusively within [REDACTED] and [REDACTED] and continued doing so through [REDACTED]/12.

4. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$1600 in allegedly over-issued FAP benefits for the period of [REDACTED]/2011 through [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).

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 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 for residency is "living in Michigan".

Leaving the State of Michigan does not necessarily equate to a loss of Michigan residency. DHS has no known policies banning travel or FAP benefit usage outside of Michigan, though there is a DHS 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 outside of Michigan is a reasonable time to allow before a loss of residency is established; the 30-day period beginning with a client's first out-of-Michigan food purchase.

It was not disputed that Respondent was a Michigan resident as of [REDACTED]/11, the date that Respondent submitted to DHS an Assistance Application reporting a Michigan residential address. DHS alleged that Respondent later lost Michigan residency when Respondent exclusively accessed Michigan issued FAP benefits outside of Michigan.

DHS presented Respondent's FAP benefit transaction history (Exhibits 29-32). The transaction history established that Respondent began exclusively accessing FAP benefits beginning [REDACTED] 11 and through [REDACTED]/12, an approximate nine month period. It is possible that Respondent lived in Michigan for a nine-month period but happened to purchase food outside of Michigan. It is possible that Respondent kept a Michigan home and always intended to return to Michigan. Though there are possibilities that Respondent was a Michigan resident between [REDACTED]/11 and 5 [REDACTED] 12, it is improbable.

Consideration was also given to the proximity between Respondent's reported address and the states in which FAP benefits were accessed. Respondent's FAP benefit use in Nevada and California is known to be hundreds of miles away from the reported Michigan address. If the address and state were in closer proximity, a loss of Michigan residency is less persuasive. The ample distance is supportive of a finding that Respondent was not living in Michigan during the period when benefits were accessed outside of Michigan.

Based on the presented evidence, Respondent is found to not be a Michigan resident as of [REDACTED]/11; 30 days after Respondent first accessed FAP benefits outside of Michigan following Michigan usage. Though Respondent is found to not be a Michigan resident as of [REDACTED]/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. These factors lend support that Respondent did not commit fraud.

DHS did not allege that Respondent concurrently received FAP benefits from multiple states. Unless Respondent received FAP benefits from more than one state, there is no apparent motive for Respondent's alleged fraud; this presumes that Respondent could have received FAP benefits from the state in which Respondent resided. Without a financial incentive, an allegation 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.

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 \$1600.

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 and amount.

There is insufficient 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.*

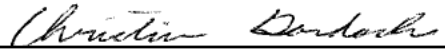
DHS alleged that FAP benefits were over-issued to Respondent over the period of [REDACTED]/12-[REDACTED]/12 due to Respondent's loss of Michigan residency. It was found above that Respondent was not a Michigan resident as of [REDACTED]/11. Allowing 10 days for reporting of the change and 10 days to calculate the benefit month affected results in an effective benefit month of [REDACTED]/2011. It is found that the FAP benefit over-issuance period is from [REDACTED]/2011-[REDACTED]/2012. DHS established that Respondent received a total of \$1400 in FAP benefits from the State of Michigan over the period of [REDACTED]/2011-[REDACTED]/2012 (see Exhibits 33-35).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to establish that Respondent committed an Intentional Program Violation stemming from an over-issuance of FAP benefits from [REDACTED]/2011-[REDACTED]/2012. DHS also failed to establish an overissuance of FAP benefits issued for [REDACTED]/2011. The DHS hearing request is PARTIALLY REVERSED.

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 \$1400

in FAP benefits for the period of [REDACTED]/2011-[REDACTED]/2012. The DHS 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

cc: 