

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-59263
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 10-25) and reported a residential address within Michigan.
2. DHS subsequently approved Respondent's FAP eligibility.
3. Beginning [REDACTED] /10, Respondent accessed FAP benefits exclusively within [REDACTED] and [REDACTED] and continued doing so through [REDACTED] /10.

4. Beginning, [REDACTED]/10, Respondent accessed FAP benefits exclusively within Michigan and continued doing so [REDACTED] 11.
5. Beginning [REDACTED]/11, Respondent accessed FAP benefits exclusively within [REDACTED] and continued doing so through [REDACTED]/11.
6. Beginning [REDACTED]/11, Respondent accessed FAP benefits exclusively within Michigan and continued doing so through 12/30/11.
7. Beginning [REDACTED]/12, Respondent accessed FAP benefits exclusively within [REDACTED] and continued doing so through [REDACTED]/12.
8. Beginning [REDACTED]/12, Respondent accessed FAP benefits exclusively within Michigan and continued doing so at least through [REDACTED]/12.
9. On [REDACTED] 13, DHS requested a hearing to establish that Respondent committed an IPV for \$2200 in allegedly over-issued FAP benefits for the following benefit months: [REDACTED]/2010-[REDACTED]/2010, [REDACTED]/2011-[REDACTED]/2011 and [REDACTED]/2012-[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.*

It was not disputed that Respondent was a Michigan resident as of 3/5/10, 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.

A loss of Michigan residency does not necessarily coincide with leaving the State of Michigan. DHS has no known policies preventing people from traveling outside of Michigan, though 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 residency in another state is established; the 30-day period beginning with a client's first out-of-Michigan food purchase.

DHS presented Respondent's FAP benefit transaction history (Exhibits 30-33). The transaction history established that Respondent began exclusively accessing FAP benefits outside of Michigan in three different periods: [REDACTED]/10-[REDACTED]3/10, [REDACTED]/11-1[REDACTED]/11 and [REDACTED]12 through [REDACTED]/12.

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". "Living in" a state could be strictly interpreted to mean the state in which the person is. Alternatively, it could be interpreted to also include the state of a person's homestead. As DHS fails to define "living in" a broader definition will be accepted.

DHS failed to establish that Respondent's homestead was outside of Michigan. DHS has access to Lexis/Nexis reports that might have established that fact.

The above-cited 30-day guideline before residency is established is appropriate in cases when there is no return to Michigan. In the present case, for every period that DHS Respondent was not in Michigan, Respondent returned to Michigan. Respondent's return to Michigan, even after a period of six months is persuasive evidence that Respondent continuously maintained a Michigan homestead even when out-of-state. It is found that DHS failed to establish that Respondent lost Michigan residency.

DHS alleged that Respondent committed an IPV and received an over-issuance of FAP benefits based on Respondent's failure to meet Michigan residency requirements. The finding that DHS failed to establish a loss of Michigan residency makes it impossible for DHS to establish an IPV or a benefit overissuance.

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 received an over-issuance of FAP benefits for the following benefit periods:10/2010-12/2010, 6/2011-11/2011 and 1/2012-2/2012. It is also found that DHS failed to establish that Respondent committed an IPV. The DHS hearing request to establish an IPV and overissuance is **DISMISSED**.



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

2013-59263/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:

