

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-22816
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: November 7, 2013
County: Wayne DHS (15)

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 November 7, 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) by receiving Food Assistance Program (FAP) benefits from multiple states.

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. Over the periods of [REDACTED]/2011 and [REDACTED]/2012-[REDACTED]/2012, Respondent received \$800 in Food Assistance Program (FAP) benefits from the State of Michigan.
2. Over the periods of [REDACTED]/2011 and [REDACTED]/2012-[REDACTED]/2012, Respondent also received FAP benefits from the State of [REDACTED].

3. On [REDACTED]/12, DHS requested a hearing to impose a 10-year IPV disqualification against Respondent and to establish an over-issuance against Respondent for \$800 in over-issued FAP benefits.
4. On [REDACTED]/13, an administrative hearing was held.
5. Respondent did not appear for the administrative hearing.
6. On [REDACTED]/13, an administrative decision determined that Respondent committed an IPV for \$1000 in over-issued benefits while affirming the imposition of a ten-year disqualification against Respondent.
7. On [REDACTED]/13, the Michigan Administrative Hearing System ordered a new hearing and vacated the decision dated [REDACTED]/13 due to a clerical error relating to the mailing of a Notice of Hearing.

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 via administrative hearing that Respondent committed an IPV.

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.* A clear and convincing threshold to establish IPV is a higher standard than a preponderance of evidence standard and less than a beyond any reasonable doubt standard. 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 committed fraud by failing to update residency information for the purpose of receiving FAP benefits from multiple states. DHS has policy to address such allegations.

Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222 (3/2013), p. 1. A person cannot receive FAP in more than one state for any month. *Id.*, p. 2.

DHS presented Respondent's State of Michigan FAP benefit history (Exhibits 1-2). The history verified that Respondent received \$200/month in FAP benefits for the benefit months of [REDACTED]/2011 and [REDACTED]/2012 through [REDACTED]/2012.

DHS presented Respondent's State of Michigan FAP benefit purchase history (Exhibits 4-8). The evidence verified that Respondent spent Michigan-issued FAP benefits outside of Michigan over the period from [REDACTED]/12-[REDACTED]/12.

Based on Respondent's FAP usage outside of Michigan, DHS investigated whether Respondent received FAP benefits from another state. DHS presented proof of Respondent's [REDACTED] FAP benefit issuance (Exhibit 3). The form appeared to show that Respondent received \$200/month from [REDACTED] for the following benefit months: [REDACTED]/2011, [REDACTED]/2012, [REDACTED]/2012, [REDACTED]/2012 and [REDACTED]/2012.

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.*

Concurrent receipt of FAP benefits from multiple states over a three-month period is very persuasive evidence that Respondent intentionally failed to update residency information with DHS for the purpose of collecting FAP benefits from multiple states. Accordingly, DHS established that Respondent committed an IPV.

A person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 203 (10/2011), p. 1. DHS seeks to impose a 10 year disqualification against Respondent.

DHS established that Respondent fraudulently failed to report residency changes for the purposes of receiving FAP benefits from multiple states. Respondent did not purposely report inaccurate information. The passive nature of Respondent's fraud is relevant to the disqualification period to be imposed. A ten year disqualification period requires active fraud. Accordingly, DHS failed to justify a basis for a ten year disqualification period.

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 (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 seeks to establish that Respondent received an over-issuance of \$1000 in FAP benefits for the benefit months of [REDACTED]/2011 and [REDACTED]/2012-[REDACTED]/2012. DHS verified that Respondent received \$200 in Michigan-issued FAP benefits for each benefit month that Respondent received FAP benefits from West Virginia. Based on Respondent's receipt of FAP benefits from [REDACTED] during periods of receiving of Michigan-issued FAP benefits, an over-issuance of \$1000 in FAP benefits is established.

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 justifying a 10 year disqualification. The DHS hearing request is **PARTIALLY DENIED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that Respondent committed an IPV justifying a one-year disqualification penalty. It is further found that DHS established that Respondent received an overissuance of \$1000 in FAP benefits for the periods of [REDACTED]/2011 and [REDACTED]/2012-[REDACTED]/2012. The DHS hearing request of DHS is **PARTIALLY AFFIRMED**.

Christian Gardocki

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

Date Signed: 12/2/2013

Date Mailed: 12/2/2013

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: [REDACTED]