

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

IN THE MATTER OF:



Reg. No.: 2013-57356
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: November 7, 2013
County: Wayne DHS (17)

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. Barbette Cole, 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 DHS is entitled to debt collection remedies for an alleged over-issuance 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. Respondent was an ongoing Food Assistance Program (FAP) benefit recipient from the State of Michigan.
2. Beginning [REDACTED]/11, Respondent exclusively spent FAP benefits in [REDACTED] through the date of [REDACTED]/11.

3. Over the course of benefit months beginning [REDACTED]/2011 and through [REDACTED]/2011, DHS issued \$1400 in FAP benefits to Respondent.
4. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$1400 in allegedly over-issued FAP benefits over the period of [REDACTED]/2011 through [REDACTED]/2011.

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 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 alleged that Respondent intentionally failed to report a change in residency to DHS resulting in improper FAP benefit issuances. To establish that Respondent committed an IPV, DHS must establish that Respondent lost Michigan residency.

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.* Based on DHS policy, the only clearly defined requirement is "living in 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 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.

DHS presented Respondent's State of Michigan FAP purchase history (Exhibits 28-29). The history verified that Respondent spent State of Michigan issued FAP benefits exclusively in [REDACTED] beginning [REDACTED]/11 and continuing through [REDACTED]/11.

It is possible that Respondent lived in Michigan the entire period but happened to purchase food outside of Michigan; that is highly unlikely considering the proximity between Michigan and [REDACTED]. It is possible that Respondent always intended to return to Michigan and therefore technically never lost residency. Though it is possible that Respondent was a Michigan resident between [REDACTED]/11 and [REDACTED]/11, it is improbable given an approximate 7 month period of spending FAP benefits exclusively 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. 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 in order 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. This evidence is supportive of finding 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 comparable FAP benefits from the state in which Respondent resided. Without evidence of a financial incentive, a fraud allegation is much less persuasive.

A claim of fraud is further hindered by the undisputed fact that DHS allowed the out-of-state FAP purchases for an extended period. If Respondent's purchases outside of Michigan amounts to fraud, then DHS should have stopped the fraud sooner.

DHS presented Respondent's Assistance Application (Exhibits 13-27) dated [REDACTED] 1/12 as proof of Respondent's fraud. DHS pointed out that the application asks, "Moved or received assistance from another state?" Respondent answered the question in the negative. The DHS application question is too vague to justify a finding of fraud based on the presented evidence. At the time of the application, over three months had passed since Respondent used FAP benefits to purchase food outside of Michigan. Respondent may have reasonably interpreted the question to mean within the last few days or even weeks. Further, even if Respondent outright lied in response to the application question, the theoretical lie has little value in determining fraud over a period that ended two months prior to the application submission.

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 DHS may pursue debt collection remedies.

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.*

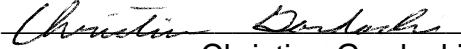
For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (4/2011), p. 13. Over-issuance balances on inactive cases 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. Respondent was not an active recipient at the time of the DHS hearing request.

DHS alleged that FAP benefits were over-issued to Respondent over the period of █/2011-█/2011 due to Respondent's loss of Michigan residency. It was found above that Respondent was not a Michigan resident as of █/11. Allowing 10 days for reporting of the change and 10 days to calculate the benefit month affected results in a date of █/11 and an effective benefit month of █/2011. DHS established that Respondent continued to receive FAP benefits through █/2011 (see Exhibit 11). It is found that the FAP benefit over-issuance period is from █/2011-█/2011. DHS established that Respondent received a total of \$1200 in FAP benefits from the State of Michigan over the period of █/2011-█/2011 (see Exhibit 11). Accordingly, DHS established an overissuance of \$1200 in FAP benefits for the period of █/2011-█/2011 which may be pursued through debt collection.

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 IPV for FAP benefits issued for the period of █/2011-█/2011. DHS also failed to establish a basis for debt collection of FAP benefits issued from █/2011. The hearing request of DHS is **PARTIALLY DENIED.**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that \$1200 in FAP benefits were over-issued to Respondent for the period of █/2011-█/2011. The hearing request of DHS is **PARTIALLY AFFIRMED.**


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:

