

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2013-57371  
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 against Respondent 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]/10, Respondent exclusively spent FAP benefits outside of Michigan continuing through the date of [REDACTED]/11.

3. Respondent continued to receive Michigan-issued FAP benefits until DHS terminated Respondent's FAP eligibility, effective █/2012.
4. Respondent applied online for FAP benefits on █/12 and claimed Michigan residency (see Exhibits 46-59).
5. DHS approved Respondent's application for FAP benefits.
6. Beginning █/12 and through █/12, Respondent spent FAP benefits outside of Michigan except for four transactions in █/2012.
7. Over the course of benefit months █/2011-█/2011 and █/2012-█/2012, DHS issued \$2336 in FAP benefits to Respondent.
8. On █/13, DHS requested a hearing to establish that Respondent committed an IPV for \$2336 in allegedly over-issued FAP benefits over the period of █/2011-█/2012.
9. As of █/13, Respondent was not an ongoing FAP benefit recipient.

### **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).

Prior to a substantive analysis of the DHS hearing request, it should be noted that the Notice of Hearing mailed to Respondent was returned by the United States Post Office as undeliverable. DHS presented testimony that Respondent's address was obtained using the most current address (as of the time of the hearing request) from Lexis/Nexis.

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 24-28). The history verified that Respondent spent State of Michigan issued FAP benefits exclusively outside of Michigan over the period of [REDACTED]/10-[REDACTED]/11. The history verified that Respondent spent the benefits between [REDACTED] and [REDACTED]. A one-year period of spending FAP benefits outside of Michigan is compelling evidence that Respondent was not living in Michigan.

DHS verified that Respondent reapplied for FAP benefits in Michigan on [REDACTED]/12. Respondent's application (Exhibits 46-59) listed a Detroit mailing address and no residential address; the application noted that Claimant was homeless. The information mirrored the addresses reported on an application (Exhibits 11-22) dated [REDACTED]/11. DHS subsequently approved Respondent's FAP benefit application based on Respondent's reported information. Respondent's FAP benefit history verified that Respondent spent FAP benefits primarily, not exclusively, outside of Michigan over the period of [REDACTED]/12 through [REDACTED]/12. Respondent made four EBT purchases in Michigan over the period of [REDACTED]/12-[REDACTED]/12.

Respondent's continued use of spending FAP benefits outside of Michigan is also an obstacle in finding that Respondent was a Michigan resident. Over the course of [REDACTED]/10 through [REDACTED]/12, Respondent's EBT history only showed a seven-day period of Michigan transactions. It is difficult to accept that Respondent could be a Michigan resident over a 21-month period when only one week was spent in Michigan.

The fact that Respondent chose to reapply using an online application is consistent with a finding that Respondent was not in Michigan. An online application is a convenient way to apply for FAP benefits if a person is far away from a DHS office.

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] [REDACTED] is a neighboring state to Michigan, however, Respondent's reported mailing address is known to be a several hour drive from the [REDACTED] border.

It is possible that Respondent took a very long vacation and always intended to return to Michigan and therefore technically never lost residency. Though it is possible, it is

improbable given two lengthy periods of FAP benefits transactions outside of Michigan sandwiching one week of FAP benefit spending in Michigan.

Based on the presented evidence, Respondent is found to not be a Michigan resident as of [REDACTED]/10; 30 days after Respondent first accessed FAP benefits outside of Michigan. Though Respondent is found to not be a Michigan resident as of [REDACTED]/10, 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.

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.

DHS presented a Lexis/Nexis record (Exhibits 32-45). Since 2010, Respondent had addresses in [REDACTED] [REDACTED] and [REDACTED]. Respondent's most recently listed time in Michigan was in 2005. Other than fraud, it is not known how Respondent could have multiple addresses outside of Michigan and none from Michigan during a period when Respondent claimed Michigan residency. Based on the present evidence, it is found that Respondent purposely misreported Michigan residency to DHS for the purpose of receiving FAP benefits to which he was not entitled.

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.

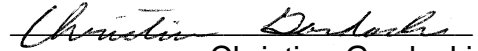
When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (1/2011), p. 1. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

DHS alleged that FAP benefits were over-issued to Respondent over the period of [REDACTED]/2011 through [REDACTED]/2012. It was found that Respondent was not a Michigan resident as of [REDACTED]/2010. Based on the presented evidence, Respondent continued to not be a Michigan resident though [REDACTED]/2012. DHS established that Respondent received a total of \$2336 in FAP benefits from the State of Michigan over the period of [REDACTED]/2011 through [REDACTED]/2012 (see Exhibits 29-31). Accordingly, DHS established an overissuance of \$2336 in FAP benefits which may be recouped.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that a basis to impose a one year disqualification

against Respondent for an IPV. It is further found that Respondent received an overissuance of \$2336 in FAP benefits over the period of [REDACTED]/2011-[REDACTED]/2012. The hearing request of DHS is **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:

[REDACTED]