

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-62426
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: December 11, 2013
County: Bay (00)

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 December 11, 2013 from Detroit, Michigan. [REDACTED], Regulation Agent for the Office of Inspector General (OIG), testified on behalf of DHS. Respondent appeared and testified.

ISSUES

The issue is whether Respondent committed an Intentional Program Violation (IPV).

The second issue is whether DHS established that Respondent received an overissuance of FAP 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 through the State of Michigan.
2. On [REDACTED] 12, Respondent married her husband and continued living with him through [REDACTED] /2012.
3. Beginning [REDACTED] /2013, Respondent temporarily lived with her spouse for unspecified periods while her primary residence was uninhabitable.

4. On an unspecified date, DHS requested a hearing to establish that Respondent committed an IPV related to a FAP benefit over-issuance of \$1112 for the months of [REDACTED]/2012, [REDACTED]/2012, [REDACTED]/2013, [REDACTED]/2013 and [REDACTED]/2013.

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 cohabitation with her husband, which resulted in an overissuance of FAP benefits. DHS must establish that Respondent and her spouse were household members for a period when Respondent was mandated to report the cohabitation.

DHS presented a Redetermination (Exhibits 12-15) signed by Respondent on [REDACTED]/12 and submitted to DHS on [REDACTED]/12. The Redetermination listed Respondent and a child as the only members of the household. The Redetermination was mailed to an address on Pine Street. In response to an address change question in the Redetermination, Respondent noted no changes.

DHS presented a marriage license (Exhibit 31). The license verified that she and her spouse were married on [REDACTED]/12. The license listed the same Wenona Street address for Respondent and her spouse.

DHS presented an Assistance Application (Exhibits 16-30) signed by Respondent's spouse and submitted to DHS on [REDACTED]/13. The application listed Respondent's spouse as the only household member for an address on [REDACTED]. DHS presented testimony that Respondent separately reported the same address as her residence. DHS became suspicious that fraud may be occurring because neither Respondent or her spouse reported living with their spouse.

The testifying DHS regulation agent testified that she spoke with Respondent's spouse's landlord and a neighbor about Respondent's living situation. The statements allegedly made by an alleged neighbor and landlord were hearsay. Neither witness had any particular reason to be truthful with DHS. Also, both persons could have been brought to the hearing by DHS though DHS chose not to do so. DHS could not even provide a last name for the alleged neighbor. The statements were considered too unreliable to consider as evidence.

DHS also presented statements made by Respondent's daughter and spouse. These statements were also hearsay but seemed to be more reliable. First, Respondent had

the authority to bring her daughter to the hearing if she were so inclined; Respondent chose not to do so. Also, the statements presented by DHS tended to corroborate Respondent's testimony rather than provide evidence of fraud.

The testifying regulation agent stated that she spoke with a representative from Respondent's child's school on [REDACTED]/13. It was clarified that the representative spoke with Respondent's child about her living situation. Respondent's child stated that she and Respondent lived with Respondent's spouse only while the [REDACTED] home was repaired.

A DHS conversation with Respondent's spouse on [REDACTED]/13 revealed marital discord two weeks into the marriage. It was also noted that there was a period when Respondent and her spouse were separated and that Respondent lived with her spouse since Christmas, due to the disrepair of the [REDACTED] residence.

Respondent conceded that she was married and lived with her spouse "for about two months" at the [REDACTED] address. Respondent testified that she and her husband separated shortly after they were married. Respondent testified that her spouse "got his own place" on [REDACTED] at some point before Christmas but after Thanksgiving.

Respondent also testified that there was a period of time when she temporarily resided with her spouse following the initial separation. Respondent testified that her [REDACTED] residence was in disrepair and that she could not live there while it was uninhabitable. Respondent testified that she returned to her residence after repairs were performed. Respondent testified that she returned to [REDACTED] sometime around [REDACTED]/2013.

The presented evidence established that Respondent and her spouse were married and living together beginning [REDACTED]/12, the date of marriage. Respondent and her spouse remained living together through [REDACTED]/2012. There appeared to be an approximate one month separation after [REDACTED]/2012 and a temporary cohabitation between Respondent and her spouse beginning in 2013 but a timeframe was not clearly and convincingly established.

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. BEM 212 (7/2013), p. 1. Spouses who are legally married and live together must be in the same group. *Id.*

There is evidence suggesting that Respondent committed fraud by failing to report her marriage and household members. The evidence presented was too convoluted to clearly and convincingly establish fraud. For example, there were multiple periods of off-and-on cohabitation between Respondent and her spouse due to marital discord. There was evidence that Respondent's spouse, even while living with Respondent, spent much of his time out of Michigan performing employment. There was evidence of a temporary living situation that was extended when repairs on Respondent's address were extended but specific timeframes were not clearly identified.

Based on the presented evidence, it is found that Respondent did not commit fraud by failing to report cohabitation with her spouse. It still must be determined whether an overissuance 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.*

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. Though it was found that Respondent did not commit fraud, the evidence established that Respondent's failure to report cohabitation was her fault.


In the IPV analysis, it was found that Respondent cohabitated with her spouse from [REDACTED]/12 through [REDACTED]/2012. DHS alleged that Respondent received an overissuance of FAP benefits in [REDACTED]/2012, [REDACTED]/2012, [REDACTED]/2013, [REDACTED]/2013 and [REDACTED]/2013. Had Respondent reported a change in household members, Respondent's FAP eligibility from [REDACTED]/2012-[REDACTED]/2012 would be affected.

DHS presented FAP budgets (Exhibits 32-42) verifying the amount of FAP benefits should have received had she reported living with her spouse to DHS. DHS also presented verification of Respondent's spouse's income (Exhibits 43-50) for each benefit month for which an overissuance occurred. Based on the presented evidence, only an overissuance for [REDACTED]/2012 was established. Based on the presented budgets, an overissuance of \$333 was 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 IPV for FAP benefits issued for the benefit months of [REDACTED]/2012 and [REDACTED]/2012-[REDACTED]/2013. DHS also failed to establish an overissuance of FAP benefits for [REDACTED]/2012-[REDACTED]/2013. 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 \$333 in FAP benefits were over-issued to Respondent for the benefit month of [REDACTED]/2012. The hearing request of DHS is **PARTIALLY AFFIRMED**.


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

2013-62426/CG

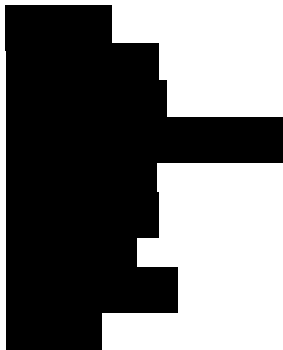
Date Signed: 1/2/2014

Date Mailed: 1/2/2014

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:

A large black rectangular redaction box covers the names and contact information of the individuals listed in the 'cc:' field.