

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20136249
Issue No.: 3052
Case No.: 113904584
Hearing Date: [REDACTED]
County: Wayne DHS (55)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon a request for a hearing by the Department of Human Services (DHS). After due notice, a telephone hearing was held on January 16, 2013, from Detroit, Michigan. DHS was represented by [REDACTED], Regulation Agent for the Office of Inspector General (OIG). Respondent did not appear and the hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(3).

ISSUES

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

The second issue is whether Respondent received an overissuance of benefits which may be recovered through debt collection actions.

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 period of 2/2011-7/2011, Respondent received \$1200 in Food Assistance Program (FAP) benefits from the State of Michigan.
2. Over the period of 2/2011-7/2011, Respondent also received FAP benefits from the State of Pennsylvania.
3. On 10/22/12, DHS requested a hearing to impose a 10 year IPV disqualification against Respondent and to establish a debt against Respondent in the amount of \$1835 in over-issued FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp Program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

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.

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 (8/2012), p. 1.

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).

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).

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.
BAM 720 (8/2012), p.1.

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.

A precondition of receiving FAP benefits is completing and signing an Assistance Application. In the fine print on the application's signature page, it is written that a client's signature is an agreement that the client read and understands the Information Booklet section of the application. The Information Booklet informs clients of various policies including the requirement to report changes which affect benefit eligibility within 10 days. It is presumed that Respondent signed an Assistance Application thereby acknowledging an understanding of the reporting requirements.

The burden of proof to establish that a client did not or could not understand reporting requirements would properly rest with a client. Respondent did not appear for the hearing to present any evidence of being able to fulfill reporting requirements. Thus, the only questionable IPV requirement is whether Respondent intentionally failed to report information to gain a windfall of benefits.

DHS established that Respondent was an ongoing FAP benefit recipient through the State of Michigan. DHS established that Respondent received FAP benefits from Michigan from 2/2011-7/2011 totaling \$1200 (see Exhibit 18). DHS established that the Michigan-issued FAP benefits from 2/2011-7/2011 were spent exclusively by Respondent in [REDACTED] (see Exhibit 16) beginning 2/10/11. Out-of-state usage is not definitive evidence of fraud. However, the allegation against Respondent is more serious.

DHS established that Respondent received FAP benefits through the State of Pennsylvania (see Exhibits 12-15) from 2/15/11-7/31/11. The amount of Respondent's Pennsylvania-issued FAP benefits was not established; however, it does not need to be. The verified multistate receipt of FAP benefits over a period of five and a half months is found to be clear and convincing proof of fraud by Respondent. 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 is to apply a ten year disqualification for concurrent receipt of benefits. BAM 720 (8/2012), p. 13. Based on the presented evidence, DHS established a basis to impose a ten year IPV disqualification due to Respondent's concurrent receipt of FAP benefits.

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.


Respondent was first eligible for [REDACTED]-issued FAP benefits on 2/15/11. Respondent's Michigan-issued FAP benefit history show that Respondent first spent the benefits in [REDACTED] on 2/10/11. Respondent is presumed to have established [REDACTED] residency on 2/15/11, the date he applied for [REDACTED] FAP benefits. Respondent would not have been entitled to FAP benefits through Michigan as of that date due to his non-residency. Assuming Respondent timely reported a change in residence to his DHS specialist, he would have still been entitled to FAP benefits from Michigan for 2/2011. Thus, only an overissuance period of 3/2011-7/2011 was established.

DHS alleged that Respondent received an over-issuance of \$1835 in FAP benefits. Respondent received \$200/month in FAP benefits each month from 3/2011-7/2011. Thus, an over-issuance of \$1000 was established; that is the amount that DHS may pursue through debt collection.

There was evidence noting that Respondent appeared to receive State Disability Assistance in 5/2011 for \$49. However, DHS did not seek repayment of these benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that Respondent committed an intentional program violation for concurrent receipt of FAP benefits. DHS established a basis to impose a 10 year disqualification against Respondent. It is further found that DHS established a basis for debt collection against Respondent for \$1,000 in over-issued FAP benefits for the period of 3/2011-7/2011. The IPV request by DHS is AFFIRMED and the debt collection request against Respondent is PARTIALLY AFFIRMED.


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

Date Signed: January 28, 2013

Date Mailed: January 28, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Respondent may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Respondent may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the Respondent:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

