

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20136251
Issue No.: 3052, 1052, 6052
Case No.: [REDACTED]
Hearing Date: January 16, 2013
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. For the period of 1/2009-3/2009, Respondent received \$1752 in Food Assistance Program (FAP) benefits and \$1491 in Family Independence program (FIP) benefits.
2. For the period of 11/23/08-3/28/09, Respondent received \$3720.60 in Child Development and Care (CDC) benefits.
3. On 1/2/09, Respondent began receiving income from an employer.

4. DHS did not budget Respondent's employment income in determining Respondent's FAP and FIP benefit eligibility for 2/2009 and 3/2009.
5. DHS should have budgeted Respondent's employment income in determining Respondent's FAP and FIP benefit eligibility for 2/2009 and 3/2009.
6. For the period of 2/2011-1/2012, Respondent received \$9394 in FAP benefits from the State of Michigan.
7. For the period of 2/19/11-1/31/12, Respondent also received FAP benefits from the State of Pennsylvania.
8. On 10/22/12, DHS requested a hearing to impose a 10 year IPV disqualification against Respondent and to establish a debt against Respondent totaling \$16,357.60 in allegedly over-issued FAP, FIP and CDC 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 section informs clients of various policies including the requirement to report changes which affect benefit eligibility within 10 days. DHS presented Assistance Applications signed by Respondent on 11/14/08 (Exhibits 23-38) and on 4/19/11 (Exhibits 83-101). DHS established that Respondent was adequately informed of her 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. There is no evidence that Respondent was unable to understand her reporting requirements. Thus, the only questionable IPV requirement is whether Respondent intentionally failed to report information to DHS in order to receive a windfall of benefits.

DHS established that Respondent received FAP benefits from Michigan from 2/2011-1/2012 totaling \$9394 (see Exhibits 80-81). DHS established that Respondent received FAP benefits through the State of Pennsylvania (see Exhibits 66-79) from 2/15/11-7/31/11. The verified multistate receipt of FAP benefits over a period of eleven 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 against Respondent due to Respondent's concurrent receipt of FAP benefits.

DHS alleged further fraud by Respondent concerning FIP benefits from 1/09-3/09, FAP benefits from 1/09-3/09 and CDC benefits from 11/23/08-3/28/09. With fraud already established for the longest disqualification period possible, further fraud findings need not be made. These fraud allegations will be considered in whether an overissuance was established.

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.

It was already established that Respondent committed fraud by concurrently receiving FAP benefits from Michigan and Pennsylvania. Concurrent receipt of FAP benefits across states, by itself, is sufficient to establish an overissuance of FAP benefits. It is found that DHS established that Respondent was over-issued \$9394 in FAP benefits for the period of 2/15/11-1/31/2012, the period in which Respondent received concurrent FAP benefits from Pennsylvania.

DHS alleged that Respondent stopped receiving income from an employer in 11/2008, but that Respondent failed to report restarting the income in 1/2009. DHS also alleged the alleged failure to report the restarting income resulted in a FAP and FIP benefit over-issuance. Respondent's employment earnings history (Exhibits 19-21) confirmed that Respondent stopped receiving income from an employer between 11/21/08-1/2/09.

Changes must be reported by clients within 10 days of receiving the first payment reflecting the change. BAM 105 (11/2012), p. 7. Based on DHS change processing policy (BEM 505), had Respondent timely reported a change in her income, no change could have been effective until 2/2012. Thus, DHS did not over-issue FAP or FIP benefits to Respondent in 1/2009.

DHS presented budgets establishing Respondent's correct benefit issuance had her restarting income been properly budgeted. For 2/2009 and 3/2009, Respondent should

have received \$0 in FAP and FIP benefits; in 2/2009 and 3/2009, Respondent received a total of \$894 in FIP benefits and \$1168 in FAP benefits. Whether Respondent failed to report the employment income or DHS failed to budget the income is irrelevant because DHS may pursue debt collection in either scenario. It is found that DHS established an additional \$2062 in over-issued benefits that are collectable through debt collection.

Lastly, DHS alleged that Respondent received an over-issuance of CDC benefits of \$3720.60 for the period of 11/23/08-3/28/09. For the period of 11/2008 and 12/2008, DHS alleged that Respondent received CDC benefits to attend a Michigan Works! Agency (MWA), but Respondent failed to attend MWA. As proof of Respondent's lack of attendance, DHS presented a Welfare Registration (Exhibits 39-40). The form indicated that Respondent attended an MWA orientation on 11/26/08. DHS conceded that the form failed to address whether Respondent did or did not attend MWA in 11/2008 or 12/2008. Thus, DHS failed to establish an OI for Respondent for 11/2008 or 12/2008.


It was not disputed that Respondent had a basis for CDC benefits for 1/2009 based on Respondent's employment. DHS contended that the OI for CDC benefits against Respondent from 1/2009-3/2009 was based on Respondent's lack of income eligibility. The maximum income limit for a four person CDC group (Respondent lived with her three children) was \$2367. Respondent's monthly income exceeded \$3,000 in each month from 1/2009-3/2009. Thus, Respondent was not entitled to CDC benefits. However, just like above, Respondent's CDC eligibility would not have been impacted until 2/2009. Thus, no CDC benefit over-issuance occurred until 2/2009. DHS presented Respondent's CDC benefit issuances from 11/2008-3/2009. The total CDC benefits issued from 2/2009 and 3/2009 totaled \$1794.

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 as follows:

- \$9394 in FAP benefits for the period of 2/15/11-1/31/2012;
- \$894 in FIP benefits for the period of 2/2009 and 3/2009;
- \$1168 in FAP benefits for the period of 2/2009 and 3/2009; and
- \$1794 in CDC benefits for the period of 2/2009 and 3/2009.

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:

