

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

IN THE MATTER OF:



Reg. No.: 2013-66586
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: December 11, 2013
County: Bay

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. Becky Mietz, 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.
2. Respondent reported to DHS that she did not live with her spouse.
3. For the period of [REDACTED]/2011 through [REDACTED]/2013, Respondent lived with her spouse.

4. For the period of [REDACTED]/2011 through [REDACTED]/2013, Respondent received FAP benefits totaling \$5211, in part, based on a group composition which did not include Respondent's spouse or his income
5. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$5211 in allegedly over-issued FAP benefits for the benefit months of [REDACTED]/2011 through [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 a change in household members resulting in an overissuance of FAP benefits. To establish that Respondent committed an IPV, DHS must establish that Respondent received an overissuance of FAP benefits based on an improper FAP benefit size.

DHS presented an Assistance Application (Exhibits 14-39) signed by Respondent on [REDACTED]/11 and submitted to DHS on [REDACTED]/11. The application listed Respondent and her son as the only household members.

DHS presented an Assistance Application (Exhibits 40-51) signed by Respondent on [REDACTED]/12 and submitted to DHS on [REDACTED]/12. The application listed Respondent and her son as the only household members.

DHS presented various documents from the Secretary of State (Exhibits 52-57). The documents verified that a gentleman, alleged to be Respondent's spouse, had the same mailing address reported as Respondent's residence. The documents also verified a current vehicle registration for the gentleman at Respondent's reported address.

DHS presented investigation notes (Exhibits 58-59) from a neighbor of Respondent's. The notes were not given consideration because of their hearsay nature.

Respondent's spouse's employment history was presented (Exhibits 60-64). The documents verified a residential address for the spouse at the same residence reported by Respondent.

Records from Respondent's spouse's employer were presented (Exhibit 66). The documents list Respondent's spouse's address, as of [REDACTED]/10, as matching Respondent's reported address.

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.*

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 presented Respondent's FAP issuance history (Exhibits 99-101) verifying that Respondent received \$5211 in FAP benefits over the period of ■/2011-■/2013. DHS also presented FAP benefit overissuance budgets (Exhibits 68-98). The budgets verified when Respondent's spouse's income is factored into FAP budgets from the period of ■/2011-■/2013, Respondent would have received \$0 in FAP benefits. Accordingly, an over-issuance of \$5211 in FAP benefits was established.

DHS established that Respondent's spouse lived with Respondent as of ■/2011. The presented evidence also verified that Respondent misreported to DHS that she did not live with her spouse. DHS also verified that the result of Respondent's misreporting was \$5211 in overissued FAP benefits.

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.

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 by failing to report that her spouse was a household member resulting in an over-issuance of \$5211 in FAP benefits for the period of ■/2011-■/2013. It is further found that DHS may impose a one year disqualification against Respondent. The DHS hearing request is **AFFIRMED**.


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

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:

