

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-66589
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. [REDACTED], 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 Respondent received an overissuance of Food Assistance Program (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 FAP benefit recipient.
2. On an unspecified date, Respondent completed an Assistance Application and listed a Michigan address as a mailing address.
3. On an unspecified date, DHS approved Respondent for FAP benefits.

4. Beginning [REDACTED]/11, Respondent began accessing FAP eligibility in Missouri and continued doing so through [REDACTED]/11
5. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$1600 in allegedly over-issued FAP benefits for the period of [REDACTED]/2011-[REDACTED]/2011.

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 from 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. A requirement in establishing an IPV is establishing 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 FAP benefit history (Exhibits 10-21). The history verified that Respondent spent State of Michigan issued FAP benefits in [REDACTED] beginning on

█/11. The history also verified that Respondent continued to spend FAP benefits exclusively in Missouri through █/11.

Respondent's approximate 7½ month period of spending FAP benefits exclusively in █ is sufficient to presume that Respondent gave up Michigan residency. It is possible that Respondent maintained Michigan residency while buying food elsewhere for an extended period. It is possible that Respondent always intended to return to Michigan. It is possible that Respondent lived in Michigan the entire period but happened to purchase food outside of Michigan. Though it is possible that Respondent was a Michigan resident between █/11 and █11, it is improbable.

Consideration was also given to the proximity between Michigan and the state from where FAP benefits were spent. If the address and state were in closer proximity, a loss of Michigan residency is less likely. The ample distance is supportive of a finding that Respondent lost Michigan residency.

Based on the presented evidence, Respondent is found to not be a Michigan resident as of █/11; 30 days after Respondent first accessed FAP benefits outside of Michigan. Though Respondent is found to not be a Michigan resident as of █/11, 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.

It is plausible that Respondent reported a change in residency but that DHS failed to act on Respondent's reporting. DHS was not able to present any written statement from Respondent, which claimed residency in Michigan during a period when Respondent was known to be outside of Michigan. DHS also could not provide evidence of a verifiable reporting system that established the failure to change Respondent's address was the fault of Respondent. This evidence is supportive of finding that Respondent did not commit fraud.

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 FAP benefits from the state in which Respondent resided. Without evidence of a financial incentive, a fraud allegation is much less persuasive.

A claim of fraud is further hindered by DHS allowing the out-of-state FAP purchases for an extended period. If Respondent committed fraud by accessing FAP benefits outside of Michigan, DHS should have stopped the allegedly improper usage sooner.

Based on the presented evidence, DHS failed to establish that Respondent intentionally failed to report a change in residency. Accordingly, it is found that DHS failed to establish that Respondent committed an IPV. Even though DHS failed to establish that Respondent committed an IPV, it must still be determined whether DHS may pursue debt collection remedies.

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.*


For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (4/2011), p. 13. Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

An IPV hearing may proceed when a Notice of Hearing is returned as undeliverable. 7 CFR 273.16(e). A hearing may not proceed for debt collection. As noted above, the USPS failed to deliver the Notice of Hearing to Respondent. Accordingly, the request for hearing concerning debt collection must be dismissed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that no decision is available for debt collection due to the returned notice of hearing mailed to Respondent. The DHS hearing request is **PARTIALLY DISMISSED**.

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 period of ■/2011-■/2011. The hearing request of DHS is **PARTIALLY DENIED**.


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:

