

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201368619
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: November 26, 2013
County: Wayne

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and in accordance with 7 CFR 273.16 and Mich. Admin Code, Rule 400.3130 upon the Department of Human Services' (Department) request for a hearing. After due notice, a hearing was held on November 26, 2013. Respondent appeared and testified. The Department was represented by RA [REDACTED] of the Office of Inspector General (OIG).

ISSUE

Whether Respondent committed an Intentional Program Violation (IPV) and whether Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits from February 1, 2011, to February 1, 2012, which the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

- (1) Respondent intentionally failed to report information or gave incomplete or inaccurate information needed to make a correct benefit determination by failing to report his change of physical residence to another state.
- (2) Respondent was clearly and correctly instructed regarding reporting responsibilities as evidenced by his signature of the assistance application.
- (3) Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

(4) Respondent committed an Intentional Program Violation (IPV) by intentionally failing to report his change of physical residence to Ohio and continuing to receive and use Food Assistance Program (FAP) benefits through Michigan when he was no longer a physical resident of Michigan and no longer eligible for benefits through Michigan.

(5) February 1, 2011, to February 1, 2012, has correctly been determined as the over-issuance period in this case.

(6) As a result of the Intentional Program Violation (IPV) Respondent received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits during the over-issuance period.

(7) On September 13, 2013, the Office of Inspector General submitted this request for a hearing to disqualify Respondent from receiving Food Assistance Program (FAP) benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) 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). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACRS R 400.3001-3015.

In this case, the Department has requested a disqualification hearing to establish an over-issuance of benefits as a result of an Intentional Program Violation (IPV) and the Department has asked that Respondent be disqualified from receiving benefits. Department policies provide the following guidance and are available on the internet through the Department's website.

BAM 720 INTENTIONAL PROGRAM VIOLATIONS

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and over-issuance (OI) type. This item explains Intentional Program Violation (IPV) processing and establishment.

BAM 700 explains OI discovery, OI types and standards of promptness. BAM 705 explains agency error and BAM 715 explains client error.

DEFINITIONS

All Programs

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.

IPV is suspected when there is clear and convincing 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.

IPV

FIP, SDA and FAP

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.

OVERISSUANCE PERIOD

OI Begin Date FIP, SDA, CDC and FAP

The OI period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months (6 years) before the date the OI was referred to the RS, whichever is later.

To determine the first month of the OI period (for OIs 11/97 or later)

Bridges allows time for:

- The client reporting period, per BAM 105.
- The full standard of promptness (SOP) for change processing, per BAM 220.
- The full negative action suspense period.

Note: For FAP simplified reporting, the household has until 10 days of the month following the change to report timely. See BAM 200.

OI End Date FIP, SDA, CDC and FAP

The OI period ends the month (or pay period for CDC) before the benefit is corrected.

IPV Hearings

FIP, SDA, CDC, MA and FAP

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

Exception: For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and;**

- The total OI amount for the FIP, SDA, CDC, MA and FAP programs combined is [REDACTED] or more, **or;**

- The total OI amount is less than [REDACTED], **and;**

- The group has a previous IPV, **or;**

- The alleged IPV involves FAP trafficking, **or;**

- The alleged fraud involves concurrent receipt of assistance (see BEM 222), **or;**

- The alleged fraud is committed by a state/government employee.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained.

During this hearing Respondent testified that he was staying in Cleveland part time because he was receiving treatment at the VA Hospital there. He also testified that he stayed with relatives there and came back to Detroit every 2-3 weeks. Respondent does not dispute that he obtained an Ohio identification card in 2011. He explained that he had obtained the identification card because he went to court for a friend regarding an

issue with the friend's dog and the court ordered him to get Ohio identification or he would not be able to appear on behalf of his friend. At one point during the hearing Respondent was asked how far the drive was between where he stayed in Cleveland and Detroit. At a different point in the hearing Respondent was asked how long the drive was between where he stayed in Cleveland and Detroit took. According to Respondent it is about 300 miles and takes about 3 hours. Google maps puts driving between Cleveland and Detroit at 169 miles taking 2.5 hours.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

Respondent's testimony that he was not living out of Michigan for more than 30 days is not credible.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) which resulted in a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup. This is Respondent's 1st Intentional Program Violation (IPV) of the Food Assistance Program (FAP) and the Department may disqualify Respondent from receiving Food Assistance Program (FAP) benefits in accordance with Department of Human Services Bridges Administration Manual (BAM) 720 (2013).

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.

/s/

Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 12/13/2013

Date Mailed: 12/16/2013

201368619/GFH

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.

GFH/sw

cc:

