

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

IN THE MATTER OF:



Reg. No.: 2014-3505
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: December 11, 2013
County: Isabella

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. [REDACTED], Regulation Agent for the Office of Inspector General (OIG), testified on behalf of DHS. Respondent appeared and testified.

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 through the State of Michigan.
2. Beginning [REDACTED]/10 and through [REDACTED]/12, Respondent primarily spent FAP benefits in Wyoming.
3. Over the course of benefit months 12/2010-6/2012, DHS issued \$3800 in FAP benefits to Respondent.

4. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$3800 in allegedly over-issued FAP benefits over the benefit months of 12/2010-6/2012.

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 residency to DHS resulting in improper FAP benefit issuances. To establish that Respondent committed an IPV, DHS must establish 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.

DHS presented Respondent's State of Michigan EBT History (Exhibits 31-39). The history verified that Respondent spent State of Michigan issued FAP benefits primarily in the State of ██████ beginning ██████/10 and continuing through ██████/12. The history also verified EBT purchases in Michigan on the following dates: 4/16/11, ██████/11, ██████/11, ██████/11, ██████/11, ██████/11 and ██████/11. A purchase from ██████ was noted on ██████/12.

DHS policy also 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.

Respondent appeared for the hearing and conceded that she moved to ██████. Respondent did not provide a moving date but her EBT history tended to verify that she

resided in [REDACTED] as of 11/2010, the first month following a full 30 days of being out of Michigan.

Though Respondent conceded that she moved to Wyoming, Respondent denied ever inaccurately reporting her address to DHS. Respondent stated that she simply let her FAP eligibility expire after moving to [REDACTED]

DHS presented a Redetermination (Exhibits 5-8) signed by Respondent on [REDACTED]/11. Respondent did not write any information in the section asking about address changes and household expenses. The Redetermination was mailed to Respondent's reported Michigan address.

An Assistance Application (Exhibits 9-30) signed by Respondent on [REDACTED]/12 was presented. The application listed Respondent's residential address to be in Michigan.

Respondent's testimony that she did not misreport her address to DHS is unsupported by the evidence. The presentation of two Respondent statements claiming residency in Michigan during a period that Respondent was in Wyoming is very persuasive evidence that Respondent committed an IPV.

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 comparable 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 the undisputed fact that DHS allowed the out-of-state FAP purchases for an extended period. If Respondent's purchases outside of Michigan amount to fraud, then DHS should have stopped the fraud sooner than 19 months after the alleged fraud had begun.

In determining whether Respondent purposely misreported an address to DHS, two instances of inaccurate reporting by Respondent is significantly more compelling than the DHS failure to quickly react to the fraud. It is found that Respondent committed an IPV.


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 alleged that FAP benefits were over-issued to Respondent over the period of 12/2010-6/2012. It was found above that Respondent committed an IPV by failing to report a residence change to Wyoming beginning 9/2010. DHS presented Respondent's FAP benefit issuance history (Exhibits 40-43) which verified \$3800 in FAP benefits

issued to Respondent for the period for 12/2010-6/2012. Thus, DHS established that Respondent received \$3800 in FAP benefits for the period of 12/2010-6/2012.

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 IPV for \$3800 in over-issued FAP benefits over the period of 12/2010-6/2012. DHS also established a basis for a 12 month disqualification penalty against Respondent. The hearing request of DHS is **AFFIRMED**.


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

Date Signed: 1/3/2014

Date Mailed: 1/3/2014

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:

