

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-7507
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: December 11, 2013
County: Genesee

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 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 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. On [REDACTED]/11, Respondent submitted to DHS an Assistance Application (Exhibits 6-25) requesting Food Assistance Program (FAP) benefits.
2. Respondent's application listed that he had no employment income.
3. Respondent subsequently became an ongoing FAP benefit recipient, in part, based on \$0 in reported employment income.

4. Respondent received employment income over the months of 5/2011-12/2012 (see Exhibit 27).
5. On 5/18/12, Respondent submitted an Assistance Application (Exhibits 28-49) to DHS which indicated that Respondent had no employment income.
6. For the months of 7/2011-7/2012, Respondent received a total of \$2490 in FAP benefits, in part, by factoring \$0 in employment income.
7. Had Respondent's employment income been factored for the period of 7/2011-7/2012, Respondent would have received \$294 in FAP benefits.
8. On [REDACTED]/12, DHS requested a hearing to establish that Respondent committed an IPV for \$2196 in allegedly over-issued FAP benefits for the period of 7/2011-7/2012.

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 list the requirements for an 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).

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 rights and responsibilities section of the application. The rights and responsibilities section informs clients of various policies including the requirement to report changes which affect benefit eligibility within 10 days. DHS presented Respondent's Assistance Application dated 10/17/11 (Exhibits 6-30) which verified that Respondent understood his reporting responsibilities. No evidence was presented to suggest that Respondent had an impairment causing a failure to understand reporting responsibilities.

DHS alleged that Respondent intentionally failed to report receipt of employment income. DHS alleged that Respondent's failure to report employment income resulted in \$2196 of improperly issued FAP benefits for the period of 7/2011-7/2012.

DHS presented two Assistance Applications signed by Respondent. One application was signed by Respondent on 5/20/11 and a second application was signed by Respondent on 8/23/12. Both applications reported that Respondent received zero employment income.

DHS presented a document (Exhibit 27) from Respondent's employer verifying that Respondent's employment start date was 5/9/11. The document also verified that Respondent received monthly employment income over the period of 5/2011 through

11/2012. From 5/2011 through 11/2012, Respondent only received more than \$1,000 in income in every month except two.

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 documents verifying Respondent's FAP benefit issuances from 7/2011-7/2012 (Exhibits 50-52). DHS presented updated FAP budgets (Exhibits 53-66) for the months of 7/2011-7/2012 calculating Respondent's FAP eligibility had Respondent reported his income. The budgets verified that Respondent received \$2490 in FAP benefits for the benefit months of 7/2011-7/2012. The budgets verified that Respondent's correct issuance based on his unreported income is \$294. DHS established that Respondent received \$2196 in over-issued FAP benefits due to unreported income.

The presented evidence established that Respondent twice misreported his employment income to DHS. The evidence established that Respondent's employment income was too substantial to have been unreported for any reason other than fraud. It is found that DHS established that Respondent committed an IPV.

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 employment income for the period of 7/2011-7/2012 resulting in an over-issuance of \$2196 in FAP benefits. 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: 1/3/2014

Date Mailed: 1/3/2014

2014-7507/CG

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:

