

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-6271
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: January 8, 2014
County: Wayne (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 January 8, 2014, 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 over-issuance 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 Food Assistance Program (FAP) benefit recipient through the State of Michigan.
2. Beginning [REDACTED]/11 and through [REDACTED]/12, Respondent exclusively spent FAP benefits outside of Michigan.

3. Over the course of benefit months 9/2011-2/2012, DHS issued \$1,200 in FAP benefits to Respondent.
4. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$1200 in allegedly over-issued FAP benefits over the benefit months of 9/2011-2/2012.

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 an over-issuance of FAP benefits. The DHS Hearing Summary (Exhibit 1) alleged an over-issuance of \$3340 for the period of 2/2013 to 5/2013. Respondent received a total of \$2672 in FAP benefits for the months of 2/2013-5/2013 (see Exhibit 43). DHS presented testimony that \$3340 also factored an overissuance of 1/2013. During the hearing, DHS sought to amend their Hearing Summary to include 1/2013 as part of the alleged overissuance period. DHS is expected to identify accurate dates and amounts of alleged benefit overissuances in their Hearing Summary. The Hearing Summary provides clients with notice of the DHS allegations. Allowing DHS to extend the period or amount of overissuance at the hearing deprives clients notice of DHS' allegations. During the hearing, DHS was denied an opportunity to amend the Hearing Summary to reflect an overissuance period of 1/2013-5/2013 due to the lack of Respondent notice that 1/2013 was a disputed month. For purposes of this decision, DHS may include 1/2013 as a month where a FAP benefit overissuance occurred.

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 FAP application (Exhibits 11-28) submitted to DHS on 2/11/11. Respondent's application noted that Respondent intended to remain in Michigan.

DHS presented Respondent's State of Michigan EBT History (Exhibits 29-30). The history verified that Respondent spent State of Michigan issued FAP benefits exclusively in Ohio starting the date of [REDACTED]/11 and continuing through [REDACTED]/12.

DHS presented a Lexis/Nexis report (Exhibits 32-58). The report listed an [REDACTED] address for Respondent for the period of 9/2008-3/2013. The report also listed two different Michigan addresses for two different time periods, 11/2000-3/2013 and 10/2004-1/2013. A second [REDACTED] address was also noted for the period of 5/2012-12/2012. The report noted that Respondent had active Michigan and [REDACTED] voting registrations, though it was noted that Respondent voted in 11/2012 in [REDACTED]. Respondent last voted in Michigan in 2000. The report also noted that Respondent obtained an [REDACTED] driver's license in 11/2011.

The Lexis/Nexis report showed some evidence of Michigan residency but was more persuasive in establishing [REDACTED] residency. When combined with Respondent's exclusive FAP benefit spending in [REDACTED] for seven months, the evidence clearly and convincingly established [REDACTED] residency.

Consideration was given to the proximity of Michigan and [REDACTED] the state where Respondent spent Michigan-issued FAP benefits. Though [REDACTED] borders Michigan, it would be probable that Respondent would have spent FAP benefits at least once in Michigan over a seven-month period if Respondent was commuting between Michigan and [REDACTED].

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.

Based on the presented evidence, Respondent is found to have lost Michigan residency as of [REDACTED]/11, 30 days after Respondent began exclusively spending FAP benefits outside of Michigan. A finding that Respondent was not a Michigan resident does not establish that Respondent committed an IPV. DHS alleged that Respondent intentionally failed to report Michigan residency resulting in an overissuance of FAP benefits.

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 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.

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 claiming residency in Michigan during a period when Respondent was known to be outside of Michigan. DHS also did not provide evidence of a reporting system which could verify that the failure to factor Respondent's changed residency was the fault of Respondent. This evidence is supportive of finding that Respondent did not commit fraud.

Respondent's application statement that he intends to remain in Michigan is not persuasive evidence of fraud. Respondent made the statement on [REDACTED]/11. There is no evidence to suggest that Respondent knew he would not live in Michigan several months later.

Based on the totality of evidence, DHS failed to establish that Respondent committed an IPV. The analysis will consider whether an overissuance occurred.

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 may pursue an OI whether it is a client caused error or DHS error. *Id.* at 5. Client and DHS error OIs are not pursued if the estimated OI amount is less than \$125 per program. *Id.*, p. 7. The present case concerns an alleged OI of \$1,000.

Establishing whether DHS or Respondent was at fault for the OI is of no importance to the collectability of over-issued FAP benefits because DHS may collect the over-issuance in either scenario. Determining which party is at fault may affect the over-issuance period and amount.

There is insufficient evidence that Respondent is at fault for the over-issuance. It should be noted that Respondent's use of FAP benefits outside of Michigan is unconvincing evidence of fault when the State of Michigan allows out-of-state transactions. It is found that the over-issuance was due to DHS error.

For over-issuances caused by DHS error, the amount is affected by the full standard of promptness (SOP) for change processing and the negative action period. BAM 705 (7/2012), pp. 4-5. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (9/2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Other changes must be reported within 10 days after the client is aware of them. *Id.* For non-income changes,

DHS is to complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs ten days after the change is reported. *Id.*

It was found above that Respondent was not a Michigan resident as of [REDACTED]/11. Allowing Respondent 10 days to report a residency change and DHS 10 days to process the change, the first benefit month affected would be 9/2011. DHS established that Respondent received a total of \$1,200 (see Exhibit 31) over the period of 9/2011-2/2012; an over-issuance was established for this time period.

DECISION AND ORDER

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 benefit months of 9/2011-2/2012. The hearing request of DHS is **PARTIALLY DENIED.**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that \$1,200 in FAP benefits were over-issued to Respondent for the period of 9/2011-2/2012. The hearing request of DHS is **PARTIALLY AFFIRMED.**


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

Date Signed: 1/22/2014

Date Mailed: 1/22/2014

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:

[REDACTED]