

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-6282
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. Kelli Owens, Regulation Agent for the Office of Inspector General (OIG), testified on behalf of DHS. The above-named Respondent appeared. [REDACTED], Respondent's daughter testified on behalf of Respondent.

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.
2. Respondent was a member of a FAP benefit group that also included Respondent's daughter.
3. On a date before [REDACTED]/11, Respondent's daughter temporarily left Respondent's home to live in Pennsylvania.

4. Respondent's daughter returned to Respondent's home after 1/2012.
5. Respondent did not report the change in household to DHS but she did not purposefully fail to report the change in household members.
6. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$2,416 in allegedly over-issued FAP benefits for the benefit months of 8/2011 through 1/2012.

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 household members resulting in an overissuance of FAP benefits. Specifically, DHS alleged that Respondent purposely failed to report that her daughter left the household with the intention of receiving more FAP benefits than Respondent should have received.

DHS presented a Semi-Annual Contact Report (Exhibits 1-2) signed and dated by Respondent on [REDACTED]/11. The report noted that her daughter was a household member.

DHS presented a State Emergency Relief (SER) application signed and dated by Respondent on [REDACTED]/11. The application listed Respondent's daughter as a household member.

DHS presented testimony that Respondent's daughter left Respondent's household after learning that Respondent's daughter was part of a FAP benefit case from Pennsylvania. Evidence was not presented to verify the testimony.

Respondent conceded that her daughter was out of her house for a brief period in 2011. Respondent conceded that the period began in 8/2011, though Respondent contended that her daughter returned before the end of 2011. Respondent's daughter, the one who was out of the house, also testified; she conceded that she remembered living in Pennsylvania as late as 1/2012. Respondent's daughter's testimony was more persuasive than Respondent's. The evidence established that Respondent's daughter was not in the Respondent's home from 8/2011 through 1/2012.

Respondent and her daughter each testified that Respondent's daughter had behavioral problems. Both also agreed that the move to Pennsylvania was a temporary circumstance in an attempt to help address Respondent's daughter's behavior.

Respondent testified that she expected that her daughter would be out of her home for less than a month. Thus, in her mind, Respondent did not think to report to DHS that her daughter left the house because the arrangement was expected to be temporary.

When Respondent submitted an SER application to DHS on [REDACTED]/11, three months had elapsed since her daughter left the household. The reporting of her daughter as a household member is a clear failure by Respondent to accurately report her circumstances. Respondent's statement is slightly forgivable if Respondent reasonably believed that her daughter's return was imminent.

Generally, a written statement from a client which contradicts reality is definitive evidence of fraud. In the present case, there are circumstances which justify possible exceptions to the generality.

DHS policy is consistent with finding that fraud did not occur if Respondent truly thought that her daughter's absence from the household was less than 30 days. DHS policy indicates that a person outside of a home for less than 30 days is only temporarily absent and still a member of a FAP benefit group and household (see BEM 212). Though it was established that Respondent's daughter was out of the house for four months, it is plausible that Respondent's mindset was that her daughter's absence would be much shorter.

Presumably, Respondent's daughter's absence was temporary as only a six-month period of overissuance was alleged. Had Respondent's daughter's absence been permanent, DHS would have likely sought to establish a lengthier period of overissuance.

Though there was evidence of fraud by Respondent, the fraud was not clear and convincing. Accordingly, DHS failed to establish that Respondent committed an IPV. Though an IPV was not established, an overissuance was established.

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.*

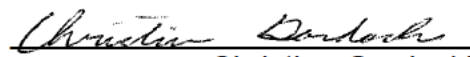
DHS presented Respondent's FAP issuance history (Exhibit 19) verifying that Respondent received \$2,416 in FAP benefits over the months of 8/2011-1/2012. The Hearing Summary mistakenly alleged an overissuance of all FAP benefits issued to Respondent.

DHS presented FAP benefit overissuance budgets (Exhibits 20-22). The budgets verified when Respondent's daughter's absence is factored into FAP budgets from the period of 8/2011-1/2012, Respondent would have received \$1050 in FAP benefits. Accordingly, an over-issuance of \$1,366 in FAP benefits was established.

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 8/2011-1/2012. 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 \$1,366 in FAP benefits were over-issued to Respondent for the period of 8/2011-1/2012. The hearing request of DHS is **PARTIALLY AFFIRMED**.


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

Date Signed: 2/3/2014

Date Mailed: 2/3/2014

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:

