

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-14399
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: March 13, 2014
County: Monroe

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, an in-person hearing was held on March 13, 2014, from Monroe, Michigan. [REDACTED], 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 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 1 [REDACTED] Respondent applied for Food Assistance Program (FAP) benefits.
2. As of [REDACTED], Respondent had 50% custody of his children.
3. On an unspecified date, DHS issued ongoing FAP benefits to Respondent, in part, based on Respondent's application statement that he had shared equal custody of his children with his former wife.

4. Over the period of 12/2010-4/2011, Respondent received \$1525 in FAP benefits in part, based on a FAP benefit group size, which counted Respondent's minor children.
5. On [REDACTED], DHS requested a hearing to establish that Respondent committed an IPV for \$1525 in allegedly over-issued FAP benefits for the benefit months of 12/2010-4/2011.

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 misreported status as a primary caretaker of minor children. It was not disputed that Respondent and his former spouse shared custody of their minor children.

When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody, parent/grandparent, etc.), DHS is to determine a primary caretaker. BEM 212 (9/2010), p. 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). *Id.* The child is always in the FAP group of the primary caretaker. *Id.*

DHS is to determine primary caretaker by using a twelve month period. *Id.* The twelve month period begins when a primary caretaker determination is made. *Id.* To determine the primary caretaker:

- Ask the client how many days the child sleeps at his/her home in a calendar month.
- Accept the client's statement unless questionable or disputed by another caretaker.
- If primary caretaker status is questionable or disputed, verification is needed.
- DHS is to allow both caretakers to provide evidence supporting his/her claim
Id.

DHS presented a Judgment of Divorce (Exhibits 6-16) dated [REDACTED] by a circuit court judge. The judgment stated that Respondent had parenting time two nights per week. The court order also noted that Respondent's ex-spouse had parenting time three nights per week and that Respondent and his spouse were to alternate parenting time for two days per week.

DHS presented Respondent's Assistance Application (Exhibits 17-32) dated [REDACTED]. Respondent's application listed that he and his former spouse shared equal custody of the couple's minor children.

Respondent conceded that the divorce judgment from 2005 remained in effect during the alleged overissuance period. The divorce judgment is evidence that Respondent was not a primary caretaker for his minor children.

As work schedules change, as kids grow and as time passes, it is reasonable that parents amend parenting time schedules. It is also reasonable that such changes be made outside of court for the purpose of convenience, flexibility and cost-savings. Thus, the parenting time schedule within the divorce judgment is not found to be definitive evidence of the parenting time arrangement between Respondent and his spouse.

Respondent testified that he and his wife had an unofficial agreement to equally share custody of their children, despite the contents of the divorce judgment. Respondent testified that every Wednesday, he and his wife alternated custody for the following seven days. Respondent's now-19-year-old daughter also testified to the parenting time arrangement described by her father.

Respondent's testimony was credible and reasonable. A change from a 57%-43% split to a 50/50 split is one that is less likely to involve a court procedure. That Respondent's evidence was corroborated by his daughter is also supportive that Respondent and his former spouse shared equal parenting time.

Based on the presented evidence, it is found that Respondent had 50% custodial time of his minor children. Accordingly, Respondent was a primary caretaker eligible to receive FAP benefits for his minor children. Thus, findings of fraud and overissuance based on the allegation that Respondent was not a primary caretaker may not occur.

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 period of 12/2010-4/2011. It is further found that Respondent did not receive an overissuance of FAP benefits for the period of 12/2010-4/2011. The hearing request of DHS is **DENIED**.



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

2013-14399/CG

Date Signed: 4/2/2014

Date Mailed: 4/2/2014

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:

