

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

**IN THE MATTER OF:**



Reg. No.: 2013-58420  
Issue No.: 3005  
Case No.: [REDACTED]  
Hearing Date: February 3, 2014  
County: Claire (00)

**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 February 3, 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] and through [REDACTED], Respondent exclusively spent FAP benefits outside of Michigan.

3. Respondent maintained Michigan residency over 2/2012 and 3/2012.
4. Over the course of benefit months 2/2012-3/2012, DHS issued \$1,052 in FAP benefits to Respondent.
5. On [REDACTED], DHS requested a hearing to establish that Respondent committed an IPV for \$1,052 in allegedly over-issued FAP benefits over the benefit months of 2/2012-3/2012.

### **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, though 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 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.

DHS presented Respondent's FAP application (Exhibit 1) submitted to DHS on [REDACTED]. Respondent's application noted that Respondent intended to remain in Michigan.

DHS presented a fax cover sheet and faxed checking account statement (Exhibit 2) from Respondent. Respondent faxed DHS on [REDACTED]. Respondent's checking account statement noted a mailing address in [REDACTED]. The statement was not dated but it included transactions as late as [REDACTED].

DHS presented a Documentation Record (Exhibit 3) dated [REDACTED] and stated that she lived in Virginia. It was also noted that Respondent reported that she sometimes visited her husband in Michigan.

DHS presented Respondent's State of Michigan FAP purchase history (Exhibit 4). The history verified that Respondent spent State of Michigan issued FAP benefits exclusively outside of Michigan starting [REDACTED]. The history also shows that Respondent spent benefits in Michigan from [REDACTED] through [REDACTED] then again in Virginia from [REDACTED].

DHS presented an email (Exhibit 6) to a [REDACTED] email address inquiring if Respondent received duplicate assistance. The email verified that Respondent did not receive duplicate assistance.

Consideration of Respondent's residency was given to the proximity of Michigan and [REDACTED] the state where Respondent spent Michigan-issued FAP benefits. The immense distance between the states makes it improbable that Respondent commuted in and out of Michigan but only happened to spend FAP benefits outside of Michigan.

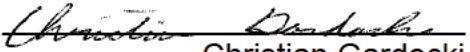
Respondent's EBT transaction history was persuasive evidence that Respondent was in [REDACTED] for the period of [REDACTED]. A three-month period outside of Michigan is evidence of a loss of Michigan residency but not clear and convincing evidence. Immediately after the three-month period in [REDACTED] Respondent's benefit purchase history verified FAP benefit spending exclusively in Michigan for two months. A return to Michigan is indicative of maintaining Michigan residency.

Respondent's checking account statement and telephone call to DHS is of little probative value to determine Respondent's residency for the months of 2/2012 and 3/2012. It was not disputed that Respondent was a Virginia resident at that time. No overissuance was alleged because DHS immediately terminated Respondent's FAP eligibility. Without a loss of Michigan residency, it can only be found that Respondent neither committed an IPV nor received an overissuance of FAP benefits.

### **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 2/2012-3/2012. It is further found that Respondent did not receive an overissuance of FAP benefits for the period of 2/2012-3/2012.

The hearing request of DHS is **DENIED**.

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

Date Signed: 2/19/2014

Date Mailed: 2/19/2014

**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:

