

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-1243
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: February 3, 2013
County: Macomb (20)

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, 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], Respondent applied for Food Assistance Program (FAP) benefits.
2. As of [REDACTED], Respondent was an ongoing employment income recipient.
3. Respondent fraudulently failed to report receipt of employment income to DHS.
4. For the months of 6/2011-12/2011, Respondent received a total of \$3682 in FAP benefits, in part, based on the budgeting of \$0 in employment income.

5. Respondent was eligible to receive \$2253 in FAP benefits after factoring Respondent's unreported income.
6. On 9/25/13, DHS requested a hearing to establish that Respondent committed an IPV for \$1,429 in allegedly over-issued FAP benefits for the period of 6/2011-12/2011.

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 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).

DHS alleged that Respondent intentionally failed to report receipt of employment income. DHS alleged that Respondent's failure to report employment income resulted in \$1,492 of improperly issued FAP benefits for the period of 6/2011-12/2011.

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 [REDACTED] (Exhibits 1-19) which verified that Respondent understood reporting responsibilities. No evidence was presented to suggest that Respondent had an impairment causing a failure to understand reporting responsibilities. The application did not list that Respondent had any employment income (see Exhibit 13).

DHS presented an Application for State Emergency Relief (Exhibits 21-25) dated by Respondent on [REDACTED]. The application noted that no persons in Respondent's household were employed.

DHS presented an Application for State Emergency Relief (Exhibits 26-30) dated by Respondent on [REDACTED]. The application noted that Respondent was employed for 25 hours per week.

DHS presented a Verification of Employment (Exhibits 31-32) with an attached pay history (Exhibits 33-34) for Respondent. DHS presented testimony that the form was received from Respondent's employer. Respondent's pay history noted that she received her first paycheck on [REDACTED] and that she continued receiving weekly checks until [REDACTED].

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 benefit issuance history (Exhibit 35). The history verified that Respondent received \$526/month in FAP benefits from 6/2011 through 12/2011.

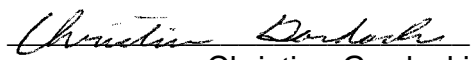
DHS presented a Claim Summary (Exhibit 36) summarizing the alleged overissuance of FAP benefits due to Respondent's alleged failure to timely report employment income. The summary along with attached Food Assistance Worksheets (Exhibits 37-43) calculated a total overissuance of \$1429 over the period of 6/2011 through 12/2011.

The presented evidence established that Respondent failed to report receipt of employment income to DHS at a time she received employment income. The 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 6/2011-12/2011 resulting in an over-issuance of \$1429 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: 2/19/2014

Date Mailed: 2/19/2014

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:

