

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-1245
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: February 3, 2014
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, 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. For the months of 10/2010 through 11/2011, Respondent primarily spent FAP benefits outside of Michigan.

3. Over the benefit months of 11/2010 through 11/2011, DHS issued \$2,600 in FAP benefits to Respondent.
4. On [REDACTED], DHS requested a hearing to establish that Respondent committed an IPV for \$2,600 in allegedly over-issued FAP benefits over the benefit months of 11/2010-11/2011.

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 an IPV, at least when to suspect one. 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 necessarily directly applicable to residency, but barring evidence suggesting otherwise, a 30 day period outside of Michigan is persuasive evidence suggesting residency outside of Michigan.

DHS presented an Assistance Application (Exhibits 1-17) signed by Respondent on [REDACTED]. DHS presented the application to prove that Respondent was aware of the responsibility to report changes in a timely manner.

DHS presented a Redetermination (Exhibits 18-21) signed by Respondent on an unspecified date. The Redetermination was mailed to Respondent on [REDACTED]. The Redetermination had a DHS "received" date stamp of [REDACTED]. Presumably, Respondent signed the form sometime between [REDACTED] and [REDACTED]. The

Redetermination was mailed to a Michigan post office box. Respondent's specialist noted on the form that Respondent "has been in [REDACTED] for over a month" and "will return next week".

DHS presented Respondent's State of Michigan FAP purchase history (Exhibits 22-25). The history verified that Respondent spent State of Michigan issued FAP benefits primarily in Alabama during the months from 10/2010 through 11/2011. The history also showed purchases in Michigan on the following dates: [REDACTED] [REDACTED] and [REDACTED] There was also five purchases from [REDACTED] and an [REDACTED] and [REDACTED] purchase sprinkled throughout the 65 [REDACTED] purchases.

DHS presented emails (Exhibits 26-27) which inquired whether Respondent received benefits from [REDACTED] while receiving State of Michigan issued benefits. The emails verified that Respondent did not concurrently receive benefits from multiple states.

The evidence established that Respondent spent a substantial majority of time in [REDACTED] over a 12-month period. Spending a substantial period of time outside of Michigan does not equate to a loss in Michigan residency. Respondent's recurring purchases in Michigan demonstrate that Respondent still had some degree of Michigan ties. By itself, the presented FAP purchase history failed to verify a loss of Michigan residency. Based on the presented evidence, DHS failed to establish that Respondent was not a Michigan resident for the period of 11/2010 through 11/2011. Without establishing a loss of Michigan residency, it can only be found that Respondent did not commit an IPV.

For good measure, Claimant's specialist noted Respondent's trips to Alabama after Claimant reported the information. Claimant's honest reporting is also consistent with finding that an IPV did not occur.

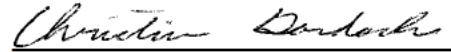
When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 700 (1/2011), p. 1. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify 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.

In the IPV analysis, it was found that Respondent was a Michigan resident for the period of 11/2010-11/2011. Just as no IPV could have occurred if Respondent was a Michigan resident from 11/2010-11/2011, no overissuance could have occurred if Respondent was a Michigan resident for the same period. Accordingly, DHS failed to establish that Respondent 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 11/2010 through 11/2011. It is further found that Respondent did not receive an overissuance of FAP benefits for the period of 11/2010 through 11/2011. 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

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