

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-1256
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. Respondent was an ongoing FAP benefit recipient.
2. Respondent received employment income for the dates of [REDACTED] and continuing through [REDACTED].
3. In 9/2011, Respondent unintentionally reported to DHS that she stopped receiving employment income.

4. For the months of 7/2011-1/2012, Respondent received a total of \$2740 in FAP benefits, in part, by factoring \$0 in employment income beginning 10/2011 and a lesser employment income than actually received by Respondent from 7/2011-9/2011.
5. On an unspecified date, DHS determined that Respondent should have received \$707 in FAP benefits over the period of 7/2011-1/2012.
6. On 9/26/13, DHS requested a hearing to establish that Respondent committed an IPV for \$2033 in allegedly over-issued FAP benefits over the period of 7/2011 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 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 \$2,033 of improperly issued FAP benefits over the benefit months from 7/2011 through 1/2012.

DHS presented Respondent's Assistance Application dated [REDACTED] (Exhibits 1-8) which verified that Respondent understood reporting responsibilities. Respondent listed ongoing receipt of employment income on the application (see Exhibit 4).

DHS presented Respondent's MICHILD and Healthy Kids Application dated [REDACTED] (Exhibits 9-12). Respondent noted that she was not employed and received \$0 employment income.

DHS presented a Verification of Employment (Exhibits 20-21) and attached pay history (Exhibit 22). The form was signed by Respondent's employer on [REDACTED]. The pay history listed that Respondent received weekly employment checks from [REDACTED] through [REDACTED].

DHS alleged that Respondent purposely failed to report employment, which resulted in an over-issuance of FAP benefits. Typically, the best evidence of fraud is a written statement by a client which contradicts known facts.

DHS established that Respondent received employment income from [REDACTED] through [REDACTED]. Respondent's MICHILD application stated that Respondent did not receive income during a time that Respondent was employed; this tends to support that

Respondent committed fraud. The MICHILD application was not the only document submitted by Respondent during the alleged fraud period.

DHS presented a Semi-Annual Contact Report (Exhibits 13-14) dated by Respondent on [REDACTED]. The Respondent checked that her employment income did not change by more than \$100 from \$1409.59/month.

DHS presented a Child Development and Care (CDC) Application (Exhibits 15-19) dated [REDACTED] by Respondent. The application noted that Respondent requested CDC benefits for the purpose of maintaining employment. The application separately listed that Respondent was employed.

The Semi-Annual Contact Report and CDC application listed that Respondent received employment income. This is supportive in finding that Respondent's failure to report employment on the MICHILD application was an unintentional error.

Respondent's reporting of employment, before, after and close to the time of the MICHILD application tends to show honest reporting of income by Respondent. Based on the presented evidence, it is found that Respondent erred by not reporting employment income on a MICHILD application but that the error was not purposeful. Without an intent to commit fraud, it must be found that Respondent did not commit an IPV. It must still be determined whether Respondent received an overissuance of FAP benefits as a result of her error.

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.*

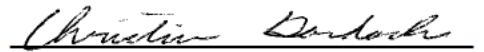
DHS presented Respondent's FAP benefit issuance history (Exhibit 23). The history listed that Respondent received FAP issuances of \$321 from 7/2011 through 9/2011, \$367 for the months of 10/2011 and 11/2011, and \$526 for the months of 12/2011 through 2/2012.

DHS presented various overissuance budgets and related documents (Exhibits 24-39). The documents factored Claimant's employment income from the attached pay history. The presented budgets excluded a 20% employment credit due to an alleged failure by Claimant to report employment income. A summary (Exhibit 24) of the budgets indicated that Respondent received \$2740 in FAP benefits for the months of 7/2011. The summary indicated that the updated FAP benefit issuances should have totaled \$707 resulting in an overissuance of \$2033. Presented budgets indicated that DHS originally budgeted \$0 employment income for Respondent for the months of 10/2011 through 1/2012. The evidence verified that Respondent received \$2,033 of over-issued FAP benefits due to Respondent's failure to report income.

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 to Respondent from 7/2011 through 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 Respondent received \$2,033 in over-issued FAP benefits for the period of 7/2011 through 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: 2/19/2014

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:

