

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-1278
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 over the periods of [REDACTED] and [REDACTED] through [REDACTED].
3. Respondent's son received employment income over the period of [REDACTED] and until [REDACTED].

4. Respondent fraudulently failed to report receipt of employment income to DHS.
5. For the months of 12/2010-6/2011, Respondent received a total of \$1470 in FAP benefits, in part, by factoring \$0 in employment income.
6. Respondent was eligible to receive \$48 in FAP benefits after factoring Respondent's unreported income.
7. On [REDACTED], DHS requested a hearing to establish that Respondent committed an IPV for \$1895 in allegedly over-issued FAP benefits for the period of 12/2010-6/2011.

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 \$1895 of improperly issued FAP benefits for the period of 12/2010-6/2011.

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. No evidence was presented to suggest that Respondent had an impairment causing a failure to understand reporting responsibilities.

DHS presented Respondent's Assistance Application dated [REDACTED] (Exhibits 1-16) which verified that Respondent understood reporting responsibilities. The application did not list that Respondent received employment income (see Exhibit 10).

DHS presented a Semi-Annual Contact Report (Exhibits 17-18) dated by Respondent on [REDACTED]. The reporting document indicated that no persons in Respondent's household were employed.

DHS presented a Redetermination (Exhibits 19-22) dated by Respondent on [REDACTED]. The reporting document indicated that Respondent received unemployment income but "no other income".

DHS presented a Verification of Employment (Exhibits 23-24) with an attached pay history (Exhibit 25). The document was from Respondent's son's former employer. Respondent's son's pay history noted that he received a first pay check on [REDACTED] and continued receiving weekly checks until [REDACTED].

DHS presented a Verification of Employment (Exhibits 26-27) with an attached pay history (Exhibit 28-29). The document was from Respondent's former employer. Respondent's pay history noted that she received a first paycheck on [REDACTED] and continued receiving weekly checks until [REDACTED].

DHS presented a Respondent's pay history (Exhibits 30-31) from a second source of employment income. The history was obtained from a known website, which provides employment information for employees of participating employers. It was noted that Respondent received pays from [REDACTED] through [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 (Exhibits 32-33). The history verified that Respondent received \$210/month in FAP benefits from 12/2010 through 6/2011.

DHS presented FAP EDG Net Income Results (Exhibits 35-44). The documents are FAP budgets that factored Respondent's unreported earnings from employment. The documents calculated \$16 benefit issuances for 12/2010-2/2011 and \$0/month issuances from 3/2011-6/2011.

The presented evidence established that Respondent received employment income over the period of 12/2010-6/2011 and that her son received employment income in 5/2011. The evidence established that Respondent failed to report that she received employment income on a Semi-Annual Contact Report submitted to DHS in 12/2010. The evidence also established that Respondent failed to report that her son received employment income on a Redetermination submitted to DHS in 5/2011. The most plausible explanation for Respondent's failure to report income was to defraud DHS. It is found that DHS established by clear and convincing evidence that Respondent committed an IPV. It is further found that DHS established an overissuance of \$1422 in FAP benefits over the period of 12/2010 through 6/2011.

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 failed to establish that Respondent received an overissuance totaling \$1895 in FAP benefits. The DHS hearing request is **PARTIALLY DENIED**.

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 12/2010-6/2011, resulting in an over-issuance of \$1422 in FAP benefits. It is further found that DHS may impose a one year disqualification against Respondent. The DHS hearing request 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:

