

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

IN THE MATTER OF:



Reg. No.: 2014-1286
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, 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 Food Assistance Program (FAP) benefit recipient.
2. On [REDACTED], Respondent applied for FAP benefits and reported that she was separated from her spouse.
3. Respondent's spouse received an unspecified amount of income over the period of 1/2011-5/2011.

4. Over the period of 1/2011-5/2011, Respondent received \$1515 in FAP benefits (see Exhibits 24-25), in part, based on a group size which did not include Respondent's spouse as a member or his income.
5. On [REDACTED], DHS requested a hearing to establish that Respondent committed an IPV for \$1515 in allegedly over-issued FAP benefits for the benefit months of 1/2011-5/2011.

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 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 household member resulting in an overissuance of FAP benefits. DHS presented evidence to support the claim.

DHS presented an Assistance Application (Exhibits 1-19) signed by Respondent on [REDACTED]. The application listed Respondent and her daughter as the only household members. Respondent noted that she paid \$550/month in rent for her residence. An interviewing specialist noted on the back of the application that Respondent claimed to be separated as of 10/2010. The interviewing specialist also noted that Respondent's bills were paid by the husband, from whom she is separated.

DHS was apparently suspicious of Respondent's statements because an investigation began shortly after Respondent applied for FAP benefits. An Investigative Findings (Exhibit 20) document was presented. It was noted that the investigator went to Respondent's residence on [REDACTED]; the investigator noted that an adult male answered the door who informed the investigator that Respondent was not home. The report noted that three other visits to Respondent's residence were made but none resulted in making contact with Respondent. The investigator noted that an interview was conducted with Respondent on [REDACTED] whereby Respondent stated that her spouse sometimes stays the night and that she does not know where her spouse lived. It was also noted that Respondent was unaware if her spouse was the owner of the home.

A statement signed by Respondent (Exhibit 21) dated [REDACTED] was presented. The statement indicated that Respondent refused further services from DHS.

A Secretary of State computer search (Exhibit 22) dated [REDACTED] was presented. The search showed a man alleged by DHS to be Respondent's spouse was registered at the same address as Respondent.

An undated Lexis/Nexis report (Exhibit 23) of Respondent's spouse was presented. The report showed that Respondent's spouse was a buyer of Respondent's residence based on a contract date of [REDACTED].

A Lease Agreement (Exhibits 27-31) signed by Respondent's spouse on [REDACTED] was presented. The lease indicated that Respondent and her spouse were renters of a property with a third-part owner. The lease agreement was presented by Respondent to DHS as an attempt to verify a rent of \$550/month.

Rent receipts (Exhibits 32) dated [REDACTED], 1 [REDACTED] and [REDACTED] were presented. The receipts noted a landlord consistent with the presented lease. DHS indicated that the receipts were submitted by Respondent to verify her rental obligation.

A General Property Information (Exhibits 33-34) document obtained from the City of Warren was presented. The document listed that a man with Respondent's spouse's name bought the home in which Respondent resides on [REDACTED].

Of the presented evidence, the most compelling evidence of fraud was Respondent's claim of rent payment to a person that was not the homeowner of the residence. It is presumed that a city tax website document and Lexis/Nexis were reliable sources to verify property ownership. It is difficult to explain a lease and rent receipts showing a non-owner as an owner unless the lease and rent receipts were fraudulently created by Respondent.

Fraud was further supported by Respondent's unconvincing claims of ignorance in an investigation. Setting aside hearsay concerns of the investigative report, it is unlikely that a client would allow a separated spouse to stay in her house yet not know where he lived. It is also exceptionally improbable that Respondent would not have known that her spouse was the owner of the house in which she lived.

Secretary of State information was also consistent with Respondent's spouse living at Respondent's reported address. This evidence is not overwhelmingly persuasive when factoring that not all persons update addresses with the Secretary of State. It is also worth noting that a date of the Secretary of State inquiry was more than a year after the alleged period of fraud.

Based on the presented evidence, it is clearly and convincingly established that Respondent misreported information to DHS. To establish fraud, an overissuance must also be established.

DHS presented a Department of Licensing and Regulatory Affairs search inquiry (Exhibit 35). The inquiry noted that Respondent's spouse had an active towing business. It was also noted that annual reports for the business were filed in 2010, 2011 and 2012 (see Exhibit 36). On [REDACTED], Respondent's spouse submitted a document to the Department of Energy, Labor and Economic Growth indicating that he was the president of a towing business (see Exhibit 37).


DHS contended that proof of Respondent's spouse's business ownership equates to proof of income which would have rendered Respondent ineligible for FAP benefits. DHS did not present any budgets to support the claim. It is tempting to require Respondent to prove that her spouse's income did not cause an overissuance in FAP benefits once DHS established that Respondent misreported information. Ultimately, a shift of the burden of proof to Respondent is inappropriate.

It is unfortunate for DHS that self-employment and/or "under the table" employment income is virtually impossible to verify. Nevertheless, it is DHS' burden to prove.

Based on the presented evidence, it is found that Respondent did not receive an overissuance of FAP benefits because DHS could not establish an amount of income by Respondent's spouse. Accordingly, it is found that Respondent did not commit an IPV and no overissuance of FAP eligibility occurred.

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 1/2011-5/2011. It is further found that Respondent did not receive an overissuance of FAP benefits for the period of 1/2011-5/2011. 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

cc:

