

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-1289
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) and Medical Assistance (MA) 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. Beginning [REDACTED] through [REDACTED], Respondent primarily spent FAP benefits outside of Michigan.

3. Over the course of benefit months 11/2010-6/2011, DHS issued \$1,676 in FAP benefits and \$667.83 in MA benefits to Respondent.
4. On [REDACTED], DHS requested a hearing to establish that Respondent committed an IPV for \$2344.83 in allegedly over-issued FAP and MA benefits over the benefit months of 11/2010-6/2011.

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 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 change in residency to DHS resulting in improper FAP and MA 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.* For MA benefits, an individual is a Michigan resident if the individual lives in Michigan, except for a temporary absence, and intends to remain in Michigan permanently or indefinitely. *Id.*, p. 2.

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 FAP group composition 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 supports the DHS claim that Respondent stopped living in Michigan.

DHS presented an Assistance Application (Exhibits 1-16) signed by Respondent on [REDACTED]. DHS presented the application to prove that Respondent was aware of a requirement to report changes within 10 days.

DHS presented a Semi-Annual Contact Report (Exhibits 17-18) signed by Respondent on [REDACTED]. On the report, Respondent did not report any residency or address changes. The report has insignificant weight because it was not submitted during the

alleged fraud period or during a period when Respondent was purchasing food outside of Michigan.

DHS presented a Redetermination (Exhibits 19-22) signed by Respondent on [REDACTED]. The Redetermination was mailed to Respondent's reported Michigan address but did not note any changes in household.

DHS presented Respondent's State of Michigan FAP purchase history (Exhibits 23-26). The history verified that Respondent made 42 purchases in Georgia over the dates [REDACTED] through [REDACTED].

A Documentation Record (Exhibit 29) dated [REDACTED] was presented. The record noted that Respondent's specialist called Friend of the Court and spoke with a person who advised the specialist that Respondent moved to [REDACTED] on an unspecified date before 4/2011. This document was given little weight due to its hearsay nature.

Respondent's FAP purchase history is persuasive evidence that Respondent spent the bulk of her time in Georgia over the period from 11/2010-6/2011. Simply because Respondent may have spent the majority of time outside of Michigan during the alleged fraud period does not establish a loss of Michigan residency.

During the alleged fraud period, Respondent purchased food in Michigan on the following dates: [REDACTED]. It is reasonably possible that Respondent resided in both states for a period of time. Based on the presented evidence, it is found that Respondent was a Michigan resident for the period of 11/2010 through 6/2011. Without a loss of Michigan residency, it can only be found that Respondent did not commit an IPV.

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 11/2010-6/2011. Just as no IPV could have occurred if Respondent was a Michigan resident, no overissuance could have occurred if Respondent was a Michigan resident. Accordingly, DHS failed to establish that Respondent received an overissuance of FAP and/or MA 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 and/or MA benefits issued for the period of 11/2010-6/2011. It is further found that Respondent did not receive an overissuance of FAP and/or MA benefits for the same period. The hearing request of DHS is **DENIED**.

Christian Gardocki

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:

