

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

IN THE MATTER OF:



Reg. No.: 2014-2809
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: December 11, 2013
County: Bay

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 December 11, 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 DHS is entitled to debt collection remedies for an alleged over-issuance 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 through the State of Michigan.
2. Respondent was an ongoing probationer under the Michigan Department of Corrections.

3. On [REDACTED] 11, Respondent was a probation absconder.
4. On [REDACTED]/12, Respondent reported to DHS that she was not in violation of probation.
5. Over the course of benefit months 7/2011-10/2012, DHS issued \$2041 in FAP benefits to Respondent.
6. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$2041 in allegedly over-issued FAP benefits over the period of 7/2011-10/2012.

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 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 being in probation of violation. DHS further alleged that Respondent purposely reported being in probation with criminal probation during a time Respondent knew to be noncompliant with probation.

DHS presented an Assistance Application (Exhibits 12-27) signed by Respondent on [REDACTED]/10 and submitted to DHS on [REDACTED]/10. DHS presented the application to establish that Respondent acknowledged her reporting responsibilities.

DHS presented an Assistance Application (Exhibits 28-51) signed by Respondent on [REDACTED]/12 and [REDACTED]/12. In response to the question "Is anyone in violation of probation or parole", Respondent answered "no".

DHS presented an Order of Probation (Exhibits 54-55) dated [REDACTED]/11. The judicial order noted various requirements for Respondent to complete as part of a criminal probation. Probation item # 3 stated Respondent shall "make a truthful report to the probation office monthly, or as often as the probation officer may require, either in person, or in writing, as required by the probation officer."

A Motion, Affidavit, and Bench Warrant (Exhibit 56) for Respondent was presented. The warrant was signed by a judge on [REDACTED]/11.

A Probation Violation Report (Exhibits 57-58) completed by a Michigan Department of Corrections agent was presented. The report was dated [REDACTED]/13. The report alleged that Respondent failed to report to the probation office on [REDACTED]/11 and that all attempts to locate her were unsuccessful. The report also noted that Respondent stated that she thought that she completed her probation after discussing the matter with her attorney.

The investigation officer also noted that Respondent violated her probation on [REDACTED]/12 when Respondent was arrested for OWI and on [REDACTED]/12 when Respondent was arrested for "No OPS- never applied".

DHS presented Respondent's FAP benefit issuance history (Exhibits 61-63). The history verified that Respondent received \$2041 in FAP benefits over the period of 7/2011-10/2012.

The evidence established that Respondent violated her probation as of [REDACTED]/11. For FAP benefits, a person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. BEM 203 (7/2013), p. 1. The person is disqualified as long as the violation occurs. *Id.*, p. 2.

It was established that Respondent stated on her Assistance Application from 1/2012 that she was not violating her probation. Based on the presented evidence, Respondent most probably knew that she answered the application untruthfully. DHS established that the result of Respondent's misrepresented question was an overissuance of FAP benefits from 1/2012-10/2012. DHS established that Respondent committed an IPV.

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.

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.*

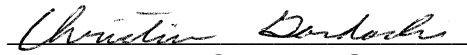
DHS may pursue an OI whether it is a client caused error or DHS error. *Id.* at 5. Client and DHS error OIs are not pursued if the estimated OI amount is less than \$125 per program. *Id.*, p. 7. The present case concerns an alleged OI of \$2041.

DHS alleged that FAP benefits were over-issued to Respondent over the period of 7/2011-10/2012 due to Respondent's probation violation. The presented evidence verified that Respondent violated probation beginning 5/2011. The result was an overissuance of FAP benefits of \$2041 for the benefit period of 7/2011-10/2012.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that Respondent committed an IPV resulting in a one year disqualification. DHS further established that Respondent received \$2041 in over-

issued FAP benefits for the benefit months of 7/2011-10/2012. The hearing request of DHS is **AFFIRMED**.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/3/2014

Date Mailed: 1/3/2014

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:

