

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-7500
Issue No.: 3005
Case No.: [REDACTED]
Hearing Date: December 11, 2013
County: Genesee

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. On [REDACTED]/11, Respondent began receiving monthly disability insurance payments.

3. DHS issued FAP benefits to Respondent from 11/2011-4/2012, without factoring Respondent's insurance income.
4. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$1200 in allegedly over-issued FAP benefits over the period of 11/2011-4/2012.

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 purposely failed to report income to DHS resulting in an over-issuance of FAP benefits. Specifically, DHS alleged that Respondent failed to report insurance payments to DHS resulting in an over-issuance of FAP benefits from 11/2011-4/2012.

DHS presented Respondent's Assistance Application (Exhibits 6-25) dated [REDACTED]/12. Respondent listed that he did not have income.

DHS presented documents (Exhibits 26-37) from Respondent's insurance company. The documents verified that Respondent received \$6462 on [REDACTED]/11 and \$1077 per month thereafter.

DHS presented Respondent's Redetermination signed by Respondent on [REDACTED] 12 and submitted to DHS on [REDACTED]/12. Respondent's Redetermination noted "I now receive my disability checks through my life insurance".

It is plausible that Respondent reported a change in income but that DHS failed to act on Respondent's reporting. DHS was not able to present any written statement from Respondent, which claimed no income during a time when Respondent was known to receive income. DHS also could not provide evidence of a verifiable reporting system that established the failure to report income was the fault of Respondent. These factors are supportive of finding that Respondent did not commit fraud.

DHS contended that Respondent's statement "I now receive disability checks" implies a first-time reporting. There is truth to the DHS contention, but Respondent's statement is not necessarily inconsistent with a previous reporting of income.

Based on the totality of evidence, DHS failed to establish that Respondent committed an IPV. The analysis will consider whether an overissuance of benefits occurred.

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 \$1200

DHS alleged that FAP benefits were over-issued to Respondent over the period of 11/2011-4/2012. DHS presented Respondent's FAP history from 11/2011-4/2012 (Exhibit 42) verifying a total issuance of \$1200. DHS presented FAP budgets from 11/2011-4/2012 (Exhibits 44-61) verifying that Respondent's total FAP issuance from 11/2011-4/2012 would have been \$96 had DHS factored Respondent's disability income.

Establishing whether DHS or Respondent was at fault for the OI is of no importance to the collectability of over-issued FAP benefits because DHS may collect the over-issuance in either scenario. Determining which party is at fault may affect the over-issuance period and amount.

For over-issuances caused by DHS error, the amount is affected by the full standard of promptness (SOP) for change processing and the negative action period. BAM 705 (7/2012), pp. 4-5. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (9/2012), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Other changes must be reported within 10 days after the client is aware of them. *Id.* For non-income changes, DHS is to complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs ten days after the change is reported. *Id.*

Whether Respondent or DHS is at fault results in an overissuance period beginning no later than 11/2011. Thus, an over-issuance was established from 11/2011-4/2012 for \$1104.

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 benefit months of 11/2011-4/2012. 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 \$1104 in FAP benefits were over-issued to Respondent for the periods of 11/2011-4/2012.

The hearing request of DHS is **PARTIALLY AFFIRMED**.

Christian Gardocki

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:

