

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

IN THE MATTER OF:



Reg. No.: 2014-7501
Issue No.: 1005; 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 appeared for the hearing. Robert Bowman testified on behalf of Respondent.

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) and Family Independence Program (FIP) benefit recipient.
2. Respondent was part of a FAP benefit group, which included her spouse and adult child.
3. Respondent's spouse began receiving employment income in

4. On [REDACTED]/13, DHS requested a hearing to establish that Respondent committed an IPV for \$492 in allegedly over-issued FIP benefits and \$598 in allegedly over-issued FAP benefits for the benefit month of 1/2012.

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 requested a hearing to establish that Respondent committed an IPV. DHS alleged that Respondent purposely failed to report employment income resulting in a FAP and FIP benefit issuance for 1/2012.

DHS presented Respondent's Assistance Application (Exhibits 6-25) signed by Respondent on 9/22/11. DHS presented the application to establish that Respondent knew of her reporting requirements.

DHS presented a Notice of Case Action (Exhibits 26-32) dated 10/7/11. DHS presented the notice to show that Respondent received notice of her simplified reporting requirements. The notice stated that Respondent did not have to report employment income changes unless household income exceeded \$2836.

DHS presented Respondent's employment history (Exhibit 35). The document did not verify any payments to Respondent in 1/2012. The documents verified that Respondent received \$491.58 in 12/2011.

DHS presented Respondent's employment payment history for a second job (Exhibit 37). The history verified that Respondent received the following pays for 12/2011: \$603 on [REDACTED]/11, \$706.50 on 1 [REDACTED]/11, \$459 on [REDACTED]/11, \$477 on 1 [REDACTED]/11 and \$472.50 on [REDACTED]/11. The history verified that Respondent received the following pays for 1/2012: \$50 on [REDACTED]/12, \$508 on [REDACTED]/12, \$387 on [REDACTED]/12, \$661.50 on [REDACTED]/12 and \$729 on [REDACTED]/12. Payments from 11/2011 were also verified.

DHS alleged that Respondent purposely failed to report employment, which resulted in an over-issuance of FAP and FIP benefits. DHS was not able to present any written statement from Respondent, which inaccurately reported employment. DHS also could not provide evidence of a verifiable reporting system that established the failure to change Respondent's address was the fault of Respondent. This evidence is supportive of finding that Respondent did not commit fraud.

Respondent appeared for the hearing. Respondent testified that she always timely reported her employment income to DHS and any fault by DHS to accurately budget her income was DHS' fault. Respondent's testimony was credible.

The fact that DHS is only alleging one month of alleged overissuance tends to be consistent with someone who is not committing fraud. Generally, clients who misreport income do so with the intention of getting a windfall of benefits for longer than one month.

Based on the totality of evidence, DHS failed to establish that Respondent committed an IPV. The analysis will consider whether an overissuance 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 claimed that if Respondent accurately reported her employment income, Respondent would have been ineligible for simplified reporting in 12/2011. DHS further alleged that Respondent received less an overissuance of FAP and FIP benefits in 1/2012 as a result of the end of her simplified reporting requirements in 12/2011. Concerning the FAP benefit analysis, the DHS allegation fails for three reasons.

The first reason has to do with the simplified reporting income limit. During the hearing, Respondent testified that she made several attempts to report that her son left her home in 12/2011 and that DHS failed to process the change. Typically, a client is expected to raise such a dispute at the time of reporting, not at an IPV hearing. Respondent was given leniency because of the duration of the alleged fraud, one month. Respondent reasonably testified that the failure by DHS to remove her adult son from the FAP benefit group was not worth disputing because her FAP benefits were not affected. Now that DHS claims an over-issuance of FAP benefits for just one month, there is reason to dispute the supposed failure to process. Respondent testified very credibly about this and provided a fair amount of details supporting her attempts at reporting the exit of her son from the household. The testifying DHS representative conceded that had Respondent's son been removed from the FAP group, then Respondent's remaining income would have fallen below the simplified reporting limit; thus, no overissuance would have occurred in 1/2012.

Secondly, DHS failed to verify how 1/2013 employment income was calculated. DHS presented a budget alleging that Respondent's total countable employment income was \$3538. Respondent's 1/2012 income was significantly less. DHS failed to present any verification of Respondent's adult son's income.

Thirdly, even accepting that Respondent's income exceeded the simplified reporting amount in 12/2011., DHS failed to clarify why Respondent's 1/2012 FAP eligibility would be impacted. Respondent should not have to anticipate her employment income

payments. Respondent would have been obligated to report her income to DHS sometime at the very end of 12/2012. DHS allows 10 days for clients to report changes and DHS does not affect benefit eligibility until the first full month following a pending negative action period of at least 11 days (see BEM 220). Thus, Respondent's 1/2012 FAP eligibility would not have been affected even if Respondent reported her 12/2011 exceeded the simplified reporting limits.

DHS failed to establish an over-issuance of FAP benefits for 1/2012. A consideration of a FIP over-issuance will be undertaken. It should be noted that Respondent's son's employment income is irrelevant to a FIP budget because Respondent's son is not a group member (see BEM 210) and simplified reporting does not apply to FIP benefits.

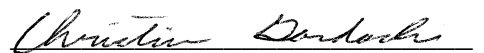
DHS verified that Respondent received substantial employment income beginning in 11/2011; thus, taking into consideration reporting time and negative action periods, Respondent's 1/2012 FIP eligibility should have been affected.

After factoring Respondent's pays, Respondent's converted monthly income for 1/2012 was \$2510; this factors a 4.3 conversion of average of weekly income (see BEM 505). DHS established that Respondent received \$598 in gross FIP benefits for 1/2012 (see Exhibit 41). DHS also established that Respondent would have received \$10 in FIP benefits for 1/2012 had Respondent's income been budgeted correctly. Accordingly, DHS established an over-issuance of \$488 in FIP 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 FIP benefits issued to Respondent in 1/2012. DHS also failed to establish a FAP benefit overissuance for 1/2012. 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 Respondent received \$488 in over-issued FIP benefits for 1/2012. The hearing request of DHS is **PARTIALLY 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

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