

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

**IN THE MATTER OF:**



Reg. No.: 2014-7504  
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. The above-named Respondent testified and appeared.

**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. On 1 [REDACTED]/11, Respondent submitted an Assistance Application (Exhibits 6-30) to DHS requesting Food Assistance Program (FAP) benefits.
2. Respondent subsequently became an ongoing FAP benefit recipient.
3. Respondent subsequently received employment income over the months of 5/2011-10/2011 and 1/2012-11/2012 (see Exhibits 32-38).

4. On [REDACTED]/12, Respondent submitted a Redetermination (Exhibits 39-42) to DHS which indicated that Respondent had no employment income.
5. DHS processed Respondent's FAP benefit eligibility over the period of 3/2012-9/2012, in part, based on \$0 employment income for Respondent.
6. On [REDACTED]/12, DHS requested a hearing to establish that Respondent committed an IPV for \$1368 in allegedly over-issued FAP benefits for the period of 3/2012-9/2012.

### **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 list the requirements for an 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).

A precondition of receiving FAP benefits is completing and signing an Assistance Application. In the fine print on the application's signature page, it is written that a client's signature is an agreement that the client read and understands the rights and responsibilities section of the application. The rights and responsibilities section informs clients of various policies including the requirement to report changes which affect benefit eligibility within 10 days. DHS presented Respondent's Assistance Application dated 10/17/11 (Exhibits 6-30) which verified that Respondent understood his reporting responsibilities. No evidence was presented to suggest that Respondent had an impairment causing a failure to understand reporting responsibilities.

DHS alleged that Respondent intentionally failed to report receipt of employment income. DHS alleged the result of Respondent's failure to report the income was \$1368 in improperly issued FAP benefits issued to Respondent over the period of 3/2012-9/2012.

DHS presented a Redetermination (Exhibits 39-42) signed by Respondent on 8/23/12. On the Redetermination, Respondent crossed out the area asking about income, thereby implying that he had no income.

DHS presented documents from Respondent's employer indicating that Respondent received income over two periods, 5/2011-10/2011 and 1/2012-11/2012. The documents listed Respondent's pay information from [REDACTED]/12 and [REDACTED]/12. The evidence was very persuasive in establishing that Respondent was employed at the time that Respondent submitted the Redetermination dated [REDACTED]/12.

Respondent appeared for the hearing and did not strongly dispute the fraud allegation. Respondent made many statements acknowledging responsibility for the misreporting. Respondent also half-heartedly suggested that his failure to list income on the

Redetermination was unintentional. The evidence did not support finding that Respondent's failure to report income was accidental.

Based on the presented evidence, DHS clearly and convincingly established that Respondent intentionally failed to report income. Accordingly, it is found that DHS established that Respondent committed an IPV.

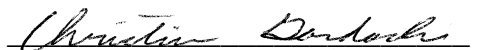
The standard disqualification period is used in all instances except when a court orders a different period. *Id.*, p. 13. DHS is to apply the following disqualification periods to recipients determined to have committed an IPV: one year for the first IPV, two years for the second IPV and lifetime for 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 presented documents verifying Respondent's FAP benefit issuances from 3/2012-9/2012 (Exhibits 43-44). DHS presented updated FAP budgets (Exhibits 45-61) for the months of 3/2012-9/2012 calculating Respondent's FAP eligibility had Respondent reported his income. The budgets verify that Respondent received \$1400 in FAP benefits for the benefit months of 3/2012-9/2012 and that Respondent should have received a total of \$32. DHS established that Respondent received \$1368 in over-issued FAP benefits due to unreported income.

### **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 intentional program violation by failing to report employment income for the period of 3/2012-9/2012 resulting in an over-issuance of \$1368 in FAP benefits. It is further found that DHS may impose a one year disqualification against Respondent. The DHS hearing request 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:

