

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Respondent

Reg. No: 2009-22127

Issue No: 4060

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 13, 2010

Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to 7 CFR 273.18; 45 CFR 233.20(a)(13); MCL 400.9; MCL 400.37; MCL 400.43(a); MAC R 400.941 and MCL 24.201, *et seq.*, upon a hearing request by the Department of Human Services (department) to establish an overissuance of benefits to respondent. After due notice was mailed to respondent, a hearing was held on January 13, 2010, and respondent did appear and testify. Respondent was represented by [REDACTED]

ISSUE

Did respondent receive an overissuance of FAP benefits?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) Respondent was an active FAP recipient during the period of March 2008 through February 2009.

(2) The father of respondent's child, [REDACTED], was required to be mandatory group member of respondent's FAP group during the period of March 2008 through February 2009.

(3) A.P. was working and receiving earned income at all times relevant to this matter.

(4) The department failed to include [REDACTED] and consider his earned income in determining respondent's eligibility for FAP benefits during the period of March 2008 through February 2009.

(5) Due to the department's error, respondent received a [REDACTED] FAP overissuance during the period of March 2008 through February 2009.

(6) The department sent respondent written notice of the department error overissuance on March 23, 2009.

(7) On April 3, 2009, the department received respondent's hearing request, protesting the department's determination that she must repay a [REDACTED] overissuance that was due to a department error.

(8) The entire amount of the FAP overissuance is still due and owing to the department.

(9) Respondent's FAP case was inactive at the time of the administrative hearing.

### CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative

Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Michigan law requires the agency to take all necessary steps to recover an overpayment made to a public assistance recipient. MCL 400.43(a). The Agency's Program Administrative Manual provides the following policy statements and instructions for agency caseworkers.

## **PAYMENT RESPONSIBILITY**

### **All Programs**

Repayment of an OI is the responsibility of the person:

- . who signed the recoupment or repayment agreement, **or**
- . who the court or hearing decision ordered to make repayment, **or**
- . anyone who was an eligible or disqualified adult in the program group at the time the OI occurred, or
- . a FAP authorized representative if they had any part in creating the FAP OI. PAM, Item 725, p. 1.

## **DEBT COLLECTION HEARINGS**

### **FIP, SDA, CDC, MA and FAP**

DHS requests hearings for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency.

### **Client Hearing Request on Inactive Cases**

DHS requests a Debt Collection Hearing when the grantee of an inactive program requests a hearing after receiving the DHS-4358B, Agency and Client Error Information and Repayment Agreement. Active recipients are afforded their hearing rights automatically, but DHS must request hearings when the program is inactive. See PAM 705 or 715, HEARING REQUESTED, Inactive Cases. PAM, Item 725, p. 18.

## **GH-800**

RS must follow up on each case listed on the GH-800. For cases that do not return a signed DHS-4355, Agreement to Repay Debt, the OIs involved must be reviewed and potentially taken to a Debt Collection Hearing.

### **Signed Repay Received**

If the client signs and returns the FIA-4355, you must:

1. file a copy of the FIA-4355 in the Incorrect Issuance Packet, **and**
2. send the original FIA-4355 to Payment Document Control, Welfare Debt Collection Unit, Central Office, **and**
3. Change the following on ARS:

Debt Collection code = B with current date, **and**

- add/change the repay code to Y for the OIs selected,
- add/change the Establishment date to the hearing date. PAM, Item 725, p. 19.

### **Notice of Hearing**

SOAHR schedules the hearing. The customer is sent an DHS-828, Notice of Debt Collection Hearing approximately 3 weeks prior to the hearing date. A copy of this notice is sent to the local office hearings coordinator.

If the DHS-828 is returned to SOAHR by the Post Office as undeliverable, SOAHR will dismiss the hearing. When this happens, update ARS by changing the Debt Collection Status code to F with the current date for all affected OIs. PAM, Item 725, p. 22.

### **Attendance at the Hearing**

The RS is expected to represent DHS unless the local office designates someone else. The hearing proceeds without the client/representative present if the DHS-828 is **not** returned by the Post Office as undeliverable. PAM, Item 725, p. 22.

**LEGAL BASE**

**FIP**

PL 104-193 of 1996  
PA 280 of 1939, as amended  
R 400.3131, 400.3129

**FAP**

7 CFR 272.8  
7 USC 2022  
R 400.3010

**SDA**

PA 280 of 1939, as amended  
Annual Appropriations Act  
R400.3177-R400.3179

PAM, Item 725, p. 22.

**CDC**

OBRA 1990, Section 5082, as amended; PL 101-508.  
45 CFR, Parts 98 and 99  
Social Security Act, as amended, Title IV-A (42 USC 601, et. seq.),  
Title IV-E (42 USC 670, et. seq.), and Title XX (42 USC 1397, et. seq.)  
R400.5014  
PEM 725, pp. 22-23

Respondent stipulated that she received a [REDACTED] FAP overissuance during the period of March 2008 through February 2009, due to a department error. Currently, the entire amount of the overissuance is due and owing to the department.

Respondent's attorney argued that respondent will suffer extreme hardship if she is responsible for repaying the [REDACTED] overissuance. Respondent testified credibly that she is disabled, unable to work, and cannot afford to repay the overissuance that she received.

Respondent's attorney asked that this Administrative Law Judge order the Department to waive the \$6032 repayment of the overissuance due to respondent's economic circumstance. In addition, he cited 7 CFR 273.18(e)(7), which states that a State agency "may compromise a claim or any portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in three years."

In this case, there is no dispute regarding the department error overissuance that Respondent received. The only issue before this Administrative Law Judge is whether respondent is responsible for reimbursing the department for FAP benefits that she received ineligibly.

Department policy states clearly that when a FAP recipient receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance whether due to department or client error. The repayment is the responsibility of anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred. (BAM 725) Respondent's request for a waiver is not within the scope of DHS Administrative Law Judges' authority. The **Delegation of Authority** signed by the DHS Director, states clearly that: "Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals."

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that respondent was overissued FAP benefits, and there is a current balance due and owing to the department in the amount of [REDACTED]

Accordingly, the Administrative Law Judge ORDERS that respondent shall reimburse the department for FAP benefits ineligibly received, and the department shall initiate collection procedures in accordance with department policy.

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Marya A. Nelson-Davis  
Administrative Law Judge  
for Ismeal Ahmed, Director  
Department of Human Services

Date Signed: \_\_\_\_\_

Date Mailed: \_\_\_\_\_

**NOTICE:** The law provides that within 60 days from the mailing date of the above hearing Decision the Respondent may appeal it to the circuit court for the county in which he/she resides or has his or her principal place of business in this state, or in the circuit court for Ingham County. Administrative Hearings, on its own motion, or on request of a party within 60 days of the mailing date of this Hearing Decision, may order a rehearing.

MAND

cc:

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