

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

**IN THE MATTER OF:**



Reg. No.: 201259967  
Issue No.: 3052  
Case No.: [REDACTED]  
Hearing Date: October 17, 2012  
County: Oakland DHS (03)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon a request for a hearing by the Department of Human Services (DHS). After due notice, a telephone hearing was held on October 17, 2012 from Detroit, Michigan. DHS was represented by [REDACTED], Regulation Agent for the Office of Inspector General (OIG). Respondent did not appear and the hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(3).

**ISSUES**

The issue is whether Respondent received an overissuance of benefits which may be recovered through debt collection actions.

**FINDINGS OF FACT**

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

1. Over the period of 12/2010-2/2012, Respondent was an ongoing FAP benefit recipient through the State of Michigan.
2. Over the period of 11/3/10-3/4/12, Respondent spent the Michigan issued FAP benefits in Indiana (see Exhibits 15-16) but for one purchase in Michigan made on 7/17/11.
3. Over the period of 12/2010-2/2012, Respondent received FAP benefits totaling \$3000 (see Exhibits 19-21).
4. On 6/25/12, DHS requested a hearing to establish that Respondent committed an intentional program violation (IPV) by receiving an overissuance of \$3000 in FAP benefits over the period of 12/2010-2/2012.

5. DHS also seeks to establish an OI of benefits against respondent so that DHS may pursue debt collection against Respondent.
6. DHS no longer wishes to pursue an administrative hearing concerning IPV because Respondent conceded the IPV issue via signed statement (see Exhibit 11).

### **CONCLUSIONS OF LAW**

The Food Assistance Program (formerly known as the Food Stamp 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). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

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 \$1401. Establishing whether DHS or Respondent was at fault for the OI is of no importance because DHS may seek to recoup the amount in either scenario.

For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725 (4/2011), p. 13. Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220 at 1. A person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. *Id.* Eligible persons may include persons who entered the state with a job commitment or to seek employment or students (this includes students living at home during a school break.) *Id.*

DHS presented a Lexis/Nexis report (Exhibit 12) to help establish out-of state residency. The report listed Claimant at an Indiana address beginning 12/2010 through present; “present” would presumably be the date the report was printed- 5/30/12. The report also listed a Michigan address for Claimant from 5/2004-4/2012. Because the report listed a

Michigan address, it was not deemed to be particularly persuasive in establishing that Respondent was not a Michigan resident through 4/2012.

DHS also presented Respondent's State of Michigan FAP benefit usage history (Exhibits 15-18). The history verified that Respondent's FAP benefits were exclusively spent in [REDACTED] over the period of 11/3/10 through 3/4/12 (see Exhibits 15-18) but for a single \$1.98 purchase made in Michigan on 7/17/11. DHS contended that Respondent's use of FAP benefits outside of Michigan for an extended period was sufficient to establish that Respondent was not a resident of Michigan for the period of 12/2010-2/2012.

Respondent's near exclusive FAP benefit usage in Indiana for an approximate sixteen month period is persuasive evidence that Respondent did not reside in Michigan starting with the first date the benefits were accessed outside of Michigan. Of all the scenarios that would explain out-of-state usage, the most probable require finding that Respondent gave up Michigan residency.

FAP benefit group composition policy notes that clients absent from a home for longer than 30 days are not considered temporarily absent. BEM 212 (9/2010), p. 2. The policy is not necessarily applicable in the present case but it would seem reasonable to allow clients a 30 day period before residency in another state is established with the 30 day period beginning with a client's first out-of-Michigan food purchase. It is also known that DHS must process non-income changes (such as moving out-of-state) to affect the benefit month that occurs 10 days after the reporting.

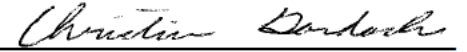
Starting with the date establishing out-of-state FAP benefit usage (11/3/10) and adding 30 days, an additional 10 days to allow for reporting and an additional 10 days before the change becomes effective results in a date of 12/23/10. The first full benefit month following this date is 1/2011. Thus, 1/2011 is the month that would have been affected had the change been timely processed, and is also found to be the first month of the potential overissuance period.

DHS alleged an over-issuance period through 2/2012. The end date is appropriate based on the dates Claimant spent FAP benefits outside of Michigan. The issuance history verified that Respondent received \$2800 in FAP benefits from 1/2011-2/2012. It is found that Respondent received \$2800 in over-issued FAP benefits for the period of 1/2011-2/2012. Accordingly, DHS established a debt of \$2800 against Respondent.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to establish a basis for debt collection against Respondent for FAP benefits issued from 12/2010. It is ordered that DHS not pursue debt collection actions against Respondent for this period. The DHS hearing request is PARTIALLY REVERSED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established a basis for debt collection for \$2800 in FAP benefits over-issued to Respondent for the period of 1/2011-2/2012. The actions taken by DHS are PARTIALLY AFFIRMED.



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

Date Signed: 10/29/2012

Date Mailed: 10/29/2012

**NOTICE:** Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Respondent may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Respondent may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the Respondent:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at  
Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322

CG/hw

cc:

