

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201211766
Issue No: 4060
Case No: [REDACTED]
Hearing Date: March 16, 2011
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 March 16, 2011, at which respondent did not appear. This matter having been initiated by the department and due notice having been provided to the respondent, the hearing was held in respondent's absence in accordance with Bridges Administrative Manual, Item 725.

ISSUE

Whether respondent received a [REDACTED] over-issuance of Family Independence Program (FIP) benefits between November 1, 2006 and August 31, 2007, which the Department of Human Services is entitled to recoup?

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 ongoing recipient of Family Independence Program (FIP) benefits because his [REDACTED] resided with him. Respondent received Retirement, Survivors, Disability Insurance (RSDI) benefits that were not included in his financial eligibility budget.
2. On September 1, 2006, Respondent's [REDACTED] began receiving regular Supplemental Security Income (SSI) benefits. This income was not included in Respondent's financial eligibility budget.

3. On November 1, 2006, Respondent began receiving Family Independence Program (FIP) benefits which his benefit group was not eligible for.
4. On November 19, 2007, Respondent was sent a Notice of Over-Issuance (DHS-4358A).
5. On November 27, 2007, Respondent submitted a request for hearing on Hearing Request for Over-issuance or Recoupment Action (DHS-4358D).
6. On December 11, 2007, the Department requested this debt collection hearing.
7. On February 7, 2011, Respondent was sent proper notice of a hearing scheduled for March 16, 2011.
8. On March 16, 2011, Respondent did not appear for the hearing. In accordance with Department policy the hearing properly proceeded in Respondent's absence.
9. On April 8, 2011, this Administrative Law Judge emailed the body of a Decision an Order for Respondent [REDACTED] and the body of a separate Decision and Order for [REDACTED] to his secretary.
10. On April 18, 2011, this Administrative Law Judge signed a Decision and Order which incorrectly combined the body of the [REDACTED] Decision and Order and the header information for Respondent [REDACTED]. Respondent [REDACTED] was incorrectly mailed the Decision and Order for [REDACTED] debt collection hearing.
11. On July 21, 2011, Attorney [REDACTED] submitted a Claim of Appeal to Oakland County Circuit Court of the April 18, 2011, Decision and Order issued by this Administrative Law Judge. The Claim of Appeal cited Respondent's DHS Case number but incorrectly stated that the Decision and Order was entered on June 9, 2011.
12. On August 8, 2011, Attorney [REDACTED] served a Motion To Remand on Michigan Administrative Hearing System (MAHS) which was forwarded to the Department of Human Services.
13. On August 11, 2011, [REDACTED] signed an Order dismissing the July 21, 2011 Claim of Appeal.
14. On August 23, 2011, Attorney [REDACTED] filed a combined Motion for Reconsideration of Order of Dismissal and Application for Leave to File A Delayed Application of Appeal in the [REDACTED].

15. On October 13, 2011, [REDACTED] signed a Stipulated Order Allowing for Delayed Application for Appeal, Dismissal with Prejudice, and a Hearing with the Department of Human Services.
16. On November 23, 2011, Michigan Administrative Hearing System (MAHS) scheduled a hearing on this matter for December 13, 2011.
17. On December 13, 2011, a conference occurred between this Administrative Law Judge and the parties. The error of this Administrative Law Judge was explained and the parties were informed that the correct Decision and Order would be issued. A hearing was not conducted. Attorney [REDACTED] objected and asserted that a hearing had to be conducted in order to comply with the [REDACTED] [REDACTED]. At the request of Attorney [REDACTED] the original Decision and Order has been updated to include subsequent events after the March 13, 2011 hearing.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

In this case Respondent requested a hearing when notified of an over-issuance on a closed program. In his request for hearing Respondent asserted he did not get the Family Independence Program (FIP) benefits. The Department has submitted evidence which shows an Electronic Benefit Card in Respondent's name was issued and spent [REDACTED] per month of Family Independence Program (FIP) benefits during the over-issuance period. There is also evidence that [REDACTED] payments were made twice each month on Respondent behalf, during the over-issuance period. The Department has requested a Debt Collection hearing. Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

BAM 700 BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). This item explains OI types and standards of promptness (SOP).

OVERISSUANCE TYPES

All Programs

The three different OI types are described below. Further detail is included in BAM 705, 715 and 720.

Agency Error

All Programs

An agency error OI is caused by incorrect action (including delayed or no action) by DHS or DIT staff or department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between department divisions (services staff, Work First! agencies, etc.).
- Data exchange reports were not acted upon timely (wage match, new hires, BENDEX, etc.). If unable to identify the type of OI, record it as an agency error.

Client Error

All Programs

A **client error** OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. A client error also exists when the client's timely request for a hearing results in deletion of a DHS action, **and any of:**

- The hearing request is later withdrawn.
- SOAHR denies the hearing request.
- The client or administrative hearing representative fails to appear for the hearing and SOAHR gives DHS written instructions to proceed.
- The hearing decision upholds the department's actions. See BAM 600.

Intentional Program Violation

FIP, SDA and FAP

The client/AR is determined to have committed an IPV by:

- A court decision.
- An administrative hearing decision.
- The client/AR signing a DHS-826, Request for Waiver of Disqualification Hearing or DHS-830 Disqualification Consent Agreement, or other recoupment and disqualification agreement form.

FAP Only

IPV exists when an administrative hearing decision, a repayment and disqualification agreement or court decision determines FAP benefits were trafficked.

MA and CDC Only

IPV exists when the client/AR or CDC provider either:

- Is found guilty of fraud by a court.
- Signs a DHS-4350 **and** the prosecutor or OIG designee, authorizes recoupment in lieu of prosecution.

BAM 725 COLLECTION ACTIONS

DEPARTMENT POLICY

FIP, SDA, CDC and FAP Only

When the client group or CDC provider receives more benefits than entitled to receive, DHS must attempt to recoup the over-issuance (OI). This item explains repayment responsibility, Benefit Recovery System data management, and the various collection processes used by DHS.

PAYMENT RESPONSIBILITY

All Programs

Repayment of an over-issuance is the responsibility of:

- Anyone who was an eligible, disqualified, or other adult in the program group at the time the over-issuance occurred.
- A FAP authorized representative if they had any part in creating the FAP over-issuance.

COLLECTIONS ON INACTIVE PROGRAMS

FIP, SDA, CDC and FAP Only

Over-issuance balances on inactive cases must be repaid by lump sum or monthly cash payments.

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 Requests 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 BAM 705 or 715, HEARING REQUESTED, Inactive Cases. Do not use the debt collection codes on Benefit Recovery System for these hearings.

Client Hearing Request

If the client requests a hearing in response to the DHS-4354, expedite the department's request for the debt collection hearing. If **any** over-issuance listed on the GH-800 is sufficiently documented, proceed with the debt collection hearing.

If the combined over-issuance balance is below \$1000 for all of the over-issuances **with** sufficient evidence, do not request a debt collection hearing.

Case Review

Request a debt collection hearing only when there is enough evidence to prove the **existence** and the **outstanding balance** of the selected over-issuances.

1. Existence of an over-issuance is shown by:
 - A court order that establishes the over-issuance, **or**
 - A signed repay agreement, **or**
 - A hearing decision that establishes the over-issuance, **or**
 - If a repay, court/hearing decision **cannot** be located,
 - Copies of the budgets used to calculate the over-issuance, **and**
 - Copies of the evidence used to establish the over-issuance, **and**
 - Copies of the client notice explaining the over-issuance.

Notice of Hearing

SOAHR schedules the hearing. The client is sent a DHS-828, Notice of Debt Collection Hearing approximately three 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.

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.

The Department has submitted sufficient evidence to establish this over-issuance claim.

PROCEDURAL EXPLANATION

The incorrect Decision and Order that was mailed to Respondent [REDACTED] on April 18, 2011 did not address the evidence presented at the March 16, 2011 hearing. Respondent [REDACTED] was most certainly entitled to a review of the incorrect Order issued. Respondent [REDACTED] received that review and the correct Order based on evidence presented at the March 16, 2011 hearing is the basis for this Decision and Order.

Respondent's Attorney asserts that another hearing must be conducted with Respondent present. Respondent's Attorney did not present any arguments or issues from Department of Human Services policy to support his assertion. The basis of the assertion is confined to the fact that an Order was issued from the Circuit Court. Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

BAM 600 HEARINGS

DEPARTMENT POLICY

All Programs

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever they believe the decision is incorrect. The department provides an administrative hearing to review the decision and determine its appropriateness. This item includes procedures to meet the minimum requirements for a fair hearing.

STANDARDS OF PROMPTNESS

All Programs

Final action on hearing requests, including implementation of the decision and order (D & O), must be completed within 90 days. The standard of promptness begins on the date the hearing request was first received by any local office or at DHS or DCH central office.

For **FAP only**, final action on hearing requests involving only FAP or FAP and any other program ex: SDA, MA, CDC must

be completed within 60 calendar days of receipt of the written or oral request.

Exception: When a hearing request is for FIP and FAP ONLY, the FIP timeliness standard of 90 day may be applied.

Local Office Time Limits

All Programs

Local offices have **15** days from receipt of hearing request to do all of the following:

- Log the request.
- Contact the client or authorized hearing representative.
- Obtain and submit to MAHS verification of the authorized hearing representative's prior authorization, if needed.
- Arrange a prehearing conference including all appropriate staff (for example, first-line supervisor, child support specialist, QC auditors, work participation program representative, FIS/ES or OIG).

Note: The conference need not be **held** within the 15 day standard.

- Determine the nature of the complaint.
- Forward the request with either an DHS-18A, Hearing Request Withdrawal, **or** an DHS-3050 to MAHS so that MAHS receives them by the fifteenth day.

For hearing requests disputing:

- Determinations made by the MRT, see "SHRT REVIEW" in this item.
- Determinations made by DCH; see "DCH HEARINGS" in this item.

The local office has **10** days from the date the decision was mailed from MAHS to implement the decision and order.

MAHS Time Limits

MAHS has 65 days to schedule and conduct a hearing, render a decision and mail it to the local office, the client and the authorized hearing representative.

Exception #1: For **MA** community spouse resource allowance requests **only**, MAHS has 15 days to schedule and conduct a hearing and 50 days to render and mail a decision.

Exception #2: For **FAP only**, MAHS has 35 days to schedule and conduct a hearing, render a decision and mail it.

Requests for Postponement (Adjournment)

All Programs

The client, authorized hearing representative, or local office may request a postponement (also called adjournment) of a scheduled hearing. Instruct the client or authorized hearing representative to call MAHS to request a postponement. **Only** MAHS can grant or deny a postponement. MAHS will notify the hearings coordinator **if** the postponement is granted. When the hearing is rescheduled, a new DHS-26A, Notice of Hearing, is mailed to everyone who received the original notice; see RFF26A.

If the postponement is granted at the request of the client or authorized hearing representative the standard of promptness is extended for as many days as the hearing is postponed. However, postponement of a telephone hearing to schedule an in-person hearing does **not** extend the standard of promptness.

Postponements requested by the local office and MAHS postponements do **not** extend the standard of promptness.

Exception #1: For **FAP only**, MAHS **must** grant one postponement of a scheduled hearing requested by the client or authorized hearing representative. It **cannot** exceed 30 days unless good cause is shown.

Exception #2: For **FAP-Intentional program violation only**, MAHS **must** grant a postponement of a scheduled hearing, **if** the client or authorized hearing representative makes the request at least 10 days in advance of the hearing. It **cannot** exceed 30 days and MAHS may limit the number of postponements to one.

HEARING DECISIONS

All Programs

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. The ALJ issues a final decision **unless**:

- The ALJ believes that the applicable law does **not** support DHS policy.

- DHS policy is silent on the issue being considered. In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision.

MAHS mails the final hearing decision to the client, the AHR and the local office. In most cases, the client has the right to appeal a final decision to Circuit Court within 30 days after that decision is received.

REHEARING/RECONSIDERATION

All Programs

A **rehearing** is a full hearing which is granted when:

- The original hearing record is inadequate for purposes of judicial review;
- There is newly discovered evidence **that existed** at the time of the original hearing, that could affect the outcome of the original hearing decision.

A **reconsideration** is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues **raised in the hearing request**.

Rehearing/Reconsideration Requests

All Programs

The department, client or authorized hearing representative may file a written request for rehearing/reconsideration. Request a rehearing/reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion.
- Typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the client.
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the client must specify all reasons for the request.

Requests

A written request made by the AHR or, if none, by the client, must be faxed to: (517) 335-6088- Attention: MAHS Client Requested Rehearing/Reconsideration. All Requests MAHS will not review any response filed to any rehearing/reconsideration requests.

A request must be received within 30 days of the date the hearing decision is mailed. The request must be received as follows:

- Department request -- received in MAHS.
- Client or authorized hearing representative request – received anywhere in DHS.

Granting A Rehearing/Reconsideration

All Programs

MAHS will either grant or deny a rehearing/reconsideration request and will send written notice of the decision to all parties to the original hearing. MAHS grants a rehearing/reconsideration request if:

- The information in the request justifies it; **and**
- There is time to rehear/reconsider the case and implement the resulting decision within the standard of promptness; see STANDARDS OF PROMPTNESS in this item.

Note: If the client or authorized hearing representative made the request and it is impossible to meet the standard of promptness, the client or authorized hearing representative may waive the timeliness requirement in writing to allow the rehearing/reconsideration.

Exception: MAHS will **not** grant a rehearing involving FAP-IPV.

If MAHS grants a reconsideration, the hearing decision may be modified without another hearing unless there is need for further testimony. If a rehearing is granted, or if the need for further testimony changes a reconsideration to a rehearing, MAHS will schedule and conduct the hearing in the same manner as the original.

Review of the October 13, 2011, Oakland Circuit Court Order shows that the parties involved were Respondent Mitchell and a representative from the Attorney General's Office. The parties stipulated to: grant Respondent's request for leave to file a delayed application for appeal "for purposes of resolving this matter only"; dismissal with

prejudice of Respondent's action; and "that the case be remanded to the Department of Human Services for purposes of scheduling a hearing forthwith." The Order does not indicate that the Circuit Court made any findings that justify a remand. The Order does not identify any constitutional, statutory, or otherwise legal reason for the remand. The Order does not describe any deficiency in the Decision and Order. The Order does not specify whether the remand is for a rehearing or reconsideration. The Order does not show any indication that either party was cognizant of the discrepancies between evidence in the hearing record and the findings contained in the incorrectly mailed Decision and Order. Neither does the Order indicate that either party reviewed Department of Human Services policy regarding Administrative Law hearings. The only thing the Order shows is that the parties agreed to go away and leave the Judge alone if he signed the order remanding the case.

It is fortunate that the mailing mistake made by this Administrative Law Judge was discovered by the remand. However, there is nothing in the record or the Order that justifies or validates conducting a second hearing. Department of Human Services policy cited above does not contain any provisions allowing a rehearing based on issues of adjournment requests or a change of heart about attending a properly noticed hearing. The findings of fact, conclusions of law, and decision and order resulting from the original hearing are finally issued on this date. Respondent will have the right to appeal the decision about his Family Independence Program (FIP) over-issuance in accordance with Department of Human Services' policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides respondent received a [REDACTED] over-issuance of Family Independence Program (FIP) benefits between November 1, 2006 and August 31, 2007, which the Department of Human Services is entitled to recoup.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHeld.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 26, 2012

Date Mailed: January 26, 2012

201211766/GFH

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.

GFH/vc

cc:

