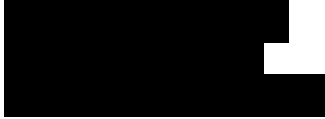


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 201228953
Issue No.: 3006
Case No.: [REDACTED]
Hearing Date: February 4, 2014
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

Upon a hearing request by the Department of Human Services (Department) to establish an overissuance (OI) of benefits to Respondent, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 400.43a, and 24.201, *et seq.*, and Mich Admin Code, R 400.941, and in accordance with 7 CFR 273.15 to 273.18, 42 CFR 431.200 to 431.250, 45 CFR 99.1 to 99.33, and 45 CFR 205.10. After due notice, a telephone hearing was held on February 4, 2014 from Lansing, Michigan. Participants on behalf of the Department included [REDACTED] (Recoupment Specialist) and [REDACTED] (Hearing Coordinator). Participants on behalf of Respondent included [REDACTED] (Respondent) and [REDACTED] (Respondent's son).

ISSUE

Did Respondent receive an OI of MiCAP Food Assistance Program (FAP) 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 a recipient of MiCAP FAP benefits from the Department.
2. On October 5, 2011, Administrative Law Judge Colleen M. Mamelka issued a Settlement Order which required the Department to: (1) determine Respondent's FAP eligibility, based on a group size of 3, for the period of April 2009 through April 2010; (2) notify Respondent of their determination; (3) supplement Respondent for any lost benefits (if any) and (4) seek recoupment of an OI of benefits (based on any difference of benefits received under MiCAP versus FAP-if any) and then notify Respondent.

3. The Department alleges Respondent received a FAP OI during the period April 1, 2009 through April 30, 2010 due to the Department's error.
4. The Department alleges that Respondent received a [REDACTED] OI that is still due and owing to the Department.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Program Administrative Manual (PAM), Department of Human Services Program Eligibility Manual (PEM) and Reference Tables (RFT).

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.

The Michigan Combined Application Project (MiCAP) is a Food Assistance demonstration project approved by the Food and Nutrition Service (FNS). MiCAP is a series of waivers that allows DHS to issue Food Assistance Program (FAP) benefits to Supplemental Security Income (SSI) individuals who qualify for this program. Bridges Eligibility Manual (BEM) 618. The MiCAP group is always a group of one. BEM 618.

When a client group receives more benefits than it is entitled to receive, DHS must attempt to recoup the overissuance (OI). PAM 700 (1-1-2009). An overissuance (OI) is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). PAM 700 (1-1-2009).

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. PAM 700 (1-1-2009). If unable to identify the type of OI, the Department records it as an agency error. PAM 700 (1-1-2009).

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. PAM (1-1-2009).

Here, the Department contends that following ALJ Mamelka's settlement order, Respondent's unearned income budgets were run which showed that Respondent received an OI of FAP benefits due to an agency error. Specifically, the Department alleges that Respondent received an OI of FAP benefits under the MiCAP program during a period of time when she had two minor children in her home. At the time, both of Respondent's children were younger than 22 years of age. The Department also contends that Respondent and her 2 children received earned income from employment as well as unearned income from the Social Security Administration (SSA) in the form of both SSI and RSDI during the relevant time period. According to the Department, it

incorrectly determined that Respondent had a FAP group size of 3 rather than 1 which is required for MiCAP eligibility. The Department also takes the position that Respondent was not eligible for FAP due to excess income during this time period. Respondent did not challenge the Department's calculations, but testified that she did nothing wrong and that she completed the assistance application truthfully. Respondent also contends that she was not aware of the agency error with regard to her FAP benefits until a department caseworker mentioned it to her.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Respondent did not directly challenge the Department's assertion that an OI of FAP benefits occurred due to an agency error. The record contained paystubs, SOLQs, and detailed budgets which laid out the Department's calculations of Respondent's monthly FAP benefits. The record evidence shows that the Department did err when it issued Respondent FAP benefits under the MiCAP program. In addition, the Department's determination that Respondent was not eligible for FAP due to excess income following ALJ Mamelka's settlement order is also correct.


The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, if any, finds that the Department did establish a FAP benefit OI to Respondent totaling [REDACTED].

DECISION AND ORDER

Accordingly, the Department is AFFIRMED.

The Department is ORDERED to initiate collection procedures for a [REDACTED] OI in accordance with Department policy.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 7, 2014

Date Mailed: February 10, 2014

NOTICE OF APPEAL: The claimant 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing 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 claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

201228953/CAP

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAP/aca

cc:

