

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

IN THE MATTER OF:



Reg. No.: 201277749
Issue No.: 1030, 3020
Case No.: [REDACTED]
Hearing Date: October 31, 2013
County: Muskegon

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 three-way telephone hearing was held on October 31, 2013, from Lansing, Michigan. Participants on behalf of the Department included [REDACTED] (Recoupment Specialist) and [REDACTED] (Family Independence Manager).

Participants on behalf of Respondent included [REDACTED] (Respondent) and [REDACTED] (Respondent's mother).

ISSUE

Did Respondent receive an OI of Family Independence Program (FIP) and 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 FIP and FAP benefits from the Department.
2. The Department alleges Respondent received a FAP OI during the period December 1, 2010 through April 1, 2011 due to Respondent's error.
3. The Department also alleges Respondent received a FIP and FAP OI during the period February 1, 2012 through March 31, 2012 due to Department's error.

4. The Department alleges that Respondent received the following OIs that are still due and owing to the Department: [REDACTED] for FAP (12/2010-4/2011), [REDACTED] for FIP (2/2012-3/2012) and [REDACTED] for FAP (2/2012-3/2012). The total OI for both programs and all periods is [REDACTED].

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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.

Policies and procedures for calculating, establishing and recouping an OI are contained in the following manual items:

- BAM 705, Agency Error Overissuances.
- BAM 710, MA and AMP Overissuances.
- BAM 715, Client Error Overissuances.
- BAM 720, Intentional Program Violation.
- BAM 725, Collection Actions.
- BEM 232, Direct Support Services.
- ERM 401, Payment.

For all programs, when a client group receives more benefits than it is entitled to receive; DHS must attempt to recoup the overissuance (OI). BAM 700, p. 1 (7-1-13).

An OI is the amount of benefits issued to the client group (or CDC provider) in excess of what it was eligible to receive. BAM 700, p. 1. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). "Recoupment" is a DHS action to identify and recover a benefit OI. BAM 700, p. 1.

There are three types of OIs: (1) agency error; (2) client error; and (3) CDC provider error. BAM 700, pp. 4-7. 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. BAM 700, p. 6. An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700, pp. 4-6. If the Department is unable to identify the type of OI, it is recorded as an agency error. BAM 700, p 4.

For FIP, SDA, CDC and FAP, the amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705, p. 6.

Here, the Department contends that Respondent received three OIs with regard to the FIP and FAP programs. The Department contends that one of the OIs (FAP 12/2010-4/2011) was due to client error in that she failed to timely report her income from employment with "[REDACTED]." Respondent does not challenge the Department's calculations nor does she dispute that she received an OI of FIP or FAP. Rather, Respondent argues that she did, in fact, report her income from [REDACTED] to the Department. Respondent did not raise any other issues in this matter.

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. This Administrative Law Judge finds that Respondent did timely and properly report all employment income to the Department. Accordingly, the Department's assessment of the FAP OI from December, 2010 through April, 2011 is an agency (or Department) error.

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

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED IN PART** with respect to the OI amounts for both FAP and FIP programs for all periods indicated above and **REVERSED IN PART** with respect to the December, 2010 through April, 2011 FAP OI being a client error. This OI was due to a department error.

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

IT IS SO ORDERED.

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

Date Signed: November 4, 2013

Date Mailed: November 5, 2013

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

201277749/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:

