

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

IN THE MATTER OF:



Reg. No.: 201278637
Issue No.: 3006
Case No.: [REDACTED]
Hearing Date: December 17, 2013
County: Kent

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 December 17, 2013 from Lansing, Michigan. Participants on behalf of the Department included [REDACTED] (Recoupment Specialist).

Respondent did not appear. This matter having been initiated by the Department and due notice having been provided to Respondent, the hearing was held in Respondent's absence in accordance with Department of Human Services Bridges Administrative Manual (BAM) 725 (1-1-2011), pp. 13-17.

ISSUE

Did the Department properly determine that Respondent received an overissuance of (OI) of 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 FAP benefits from the Department.
2. The Department alleges Respondent received a FAP OI during the period April 1, 2010 through March 31, 2011 due to the Department's error.

3. 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 Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (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.

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 (1-1-11). "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.

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 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.

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. The Department has shown that Claimant received an OI of FAP benefits in the amount of [REDACTED] during the period of April 1, 2010 through March 31, 2011. The OI occurred due to an agency or department error. The Department failed to properly include Claimant's unearned income from the Veteran's Administration (VA) when it budgeted Claimant's FAP benefits.

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.

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

Date Signed: December 18, 2013

Date Mailed: December 19, 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

201278637/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:

