

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

IN THE MATTER OF:



Reg. No.: 201319862
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: January 31, 2013
County: Mecosta

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on January 31, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED].

ISSUE

Whether the Department is entitled to recoup an overissuance of Food Assistance Program (FAP) benefits received by the Claimant?

FINDINGS OF FACT

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

1. An Administrative Hearing (REG 2007-30218) was held on March 3, 2008 to determine whether the Claimant committed an intentional program violation of the Food Assistance Program (FAP).
2. On April 10, 2008, Administrative Law Judge Michael J. Bennane signed a Decision and Order (REG 2007-30218) finding that the Department had failed to establish an intentional program violation, but that the Department is entitled to recoup overissued Food Assistance Program (FAP) benefits.
3. Findings of fact 1 - 5 from the Decision and Order (REG 2007-30218) signed on April 10, 2008, are incorporated into this decision by reference.

4. On October 23, 2012, the Office of Inspector General completed an Investigation Disposition Report (DHS-1835) and submitted this report to recoupment specialist Dawn McKay.
5. On October 24, 2012, the Department sent the Claimant a Notice of Overissuance (DHS-4358-A) informing him of an overissuance of Food Assistance Program (FAP) benefits that the Department would collect.
6. On December 1, 2012, the Department received the Claimant's request for a hearing, protesting the recoupment of Food Assistance Program (FAP) benefits.

CONCLUSIONS OF LAW

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

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) 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). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

An Administrative Hearing (REG 2007-30218) was held on March 2, 2008, and a decision and order was signed on April 10, 2008, by Administrative Law Judge Michael J. Bennane. The findings of this administrative hearing were that the Department had failed to establish an intentional program violation of the Food Assistance Program (FAP) but that the Department was entitled to recoup overissued Food Assistance Program (FAP) benefits.

On October 23, 2012, the Office of Inspector General completed an Investigation Disposition Report (DHS-1835) and submitted this report to recoupment specialist Dawn McKay. On October 24, 2012, the Department sent the Claimant a Notice of Overissuance (DHS-4358-A) informing him of an overissuance of Food Assistance Program (FAP) benefits that the Department intended to recoup.

Department of Human Services Bridges Assistance Manual (BAM) 720 pp 9-10, places the following duties on the Office of the Inspector General:

Suspected IPV cases are investigated by OIG. Within 18 months, OIG will:

- Refer suspected IPV cases that meet criteria for prosecution to the Prosecuting Attorney.
- Refer suspected IPV cases that meet criteria for IPV administrative hearings to the State Office of Administrative Hearings and Rules (SOAHR).
- Return non-IPV cases to the RS.

In this case, the Office of Inspector General failed to return the claim for recoupment against the Claimant to the recoupment specialist until October 23, 2012, following the Decision and Order signed on April 10, 2008. This was not in compliance with BAM 720.

However, the Claimant does not have a right to a hearing to protest any failure by the Department to follow policy.

Department of Human Services Bridges Assistance Manual (BAM) 600 (February 1, 2013), p 3, give the Michigan Administrative Hearing System (MAHS) the authority to grant a hearing under the following circumstances.

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.

- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service.

The Claimant was not disqualified from the Food Assistance Program (FAP) and the Department's efforts to collect a debt that had already been established does not fall within any of these circumstances where the Claimant has a right to a hearing.

The April 10, 2008, decision and order established that the Claimant had received an overissuance of Food Assistance Program (FAP) benefits, and the Claimant failed to make a timely request for a rehearing, or timely appeal to the appropriate circuit court. This Administrative Law Judge finds that an overissuance of Food Assistance Program (FAP) benefits has been established.

The Department has the authority to request disqualification of a client from the Food Assistance Program (FAP) and to recoup overissued benefits by Federal Rule 7 CFR 272.16, which included the following relevant material:

- (e) Disqualification hearings. The State agency shall conduct administrative disqualification hearings for individuals accused of intentional Program violation in accordance with the requirements outlined in this section.
 - (1) Consolidation of administrative disqualification hearing with fair hearing. The State agency may combine a fair hearing and an administrative disqualification hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that hearings will be combined. If the disqualification hearing and fair hearing are combined, the State agency shall follow the timeframes for conducting disqualification hearings. If the hearings are combined for the purpose of settling the amount of the claim at the same time as determining whether or not intentional Program violation has occurred, the household shall lose its right to a subsequent fair hearing on the amount of the claim. However, the State agency shall, upon household request, allow the household to waive the 30-day advance notice period required by paragraph (e)(3)(i) of this section when the disqualification hearing and fair hearing are combined.

The federal regulations governing the administration of the Food Assistance Program (FAP) do not limit the authority of the Department to recoup overissued benefits in circumstances such as this. Furthermore, federal regulations state that a Food

Assistance Program (FAP) recipient has no right to a subsequent hearing to protest the recoupment of a debt that has been settled by a previous hearing.

The issue presented here is similar of the doctrines of *collateral estoppel* and *res judicata*. Under Michigan law, these doctrines prevent parties from bringing an action or raising an issue that was previously decided by a court in a final judgment. Here, Claimant had a full and fair opportunity to hear the previous intentional program violation hearing held on March 3, 2008. The previous intentional program violation hearing involved the Claimant's receipt of overissued FAP benefits and any issues that Claimant has in the instant matter was, or could have been, resolved in the March 3, 2008 hearing. The Claimant cannot now challenge the determination that he received an overissuance of Food Assistance Program (FAP) benefits previously made in a final decision by another ALJ. To find otherwise, would permit endless relitigation of the same issues between the same parties or their group members.

Because Claimant's issues have already been addressed and resolved in another hearing and have been decided by an ALJ in a final decision, the undersigned does not have jurisdiction to hear the issue and there is no longer a pending dispute in this matter for the Administrative Law Judge to decide. Pursuant to Mich Admin Code R 400.906 and R 400.903, the claimant's hearing request is HEREBY DISMISSED.

It is SO ORDERED.

/s/ _____
Kevin Scully
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 8, 2013

Date Mailed: February 8, 2013

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 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 was made, within 30 days of the receipt date of the rehearing decision.

Claimant 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 claimant:
 - 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

KS/tb

cc:

