

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

IN THE MATTER OF:

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████████████████████
████████████████████

Reg. No.: 2013-226
Issue No.: 3006
Case No.: ██████████
Hearing Date: February 19, 2014
County: Macomb (50-12)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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, an in-person hearing was held on February 19, 2014, from Clinton Township, Michigan. Participants on behalf of Respondent included Respondent ██████████
████████████████████ Participants on behalf of the Department of Human Services (Department) included ██████████

ISSUE

Whether the Department properly determined thAT Respondent had received excess Food Assistance Program (FAP) benefits due to agency error?

FINDINGS OF FACT

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

1. On March 21, 2011, Respondent signed and applied for FAP benefits. This application included listed assets such as bank accounts and three vehicles.
2. On September 18, 2011, the Department issued a verification checklist requesting Respondent verify the value of assets. These verifications were due back by September 27, 2011.

3. On October 1, 2011, the Department policy regarding assets and FAP benefits was updated.
4. On September 4, 2012, the Department determined that Respondent had received FAP benefits he was not eligible to receive based upon an agency error. The Department issued a notice of overissuance.
5. On September 14, 2012, Respondent submitted a request for hearing challenging the recoupment.

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.

In the instant case, Respondent applied for FAP benefits on March 21, 2011. In his application for benefits, Respondent listed his assets including three vehicles. At the time of application, the Department did not have an asset limit for FAP benefits. The Department testified that, in anticipation of a policy change effective October 1, 2011, providing an asset limit for FAP benefits, the Department sent a verification checklist to Claimant on September 18, 2011. The Department testified the alleged verification request indicated that Respondent needed to verify assets such as the values of the vehicles listed on his application for FAP benefits. These verifications were due back by September 27, 2011. The Department testified that Respondent failed to respond to the verification request. According to the Department, the proper action should have been to close Respondent's FAP benefits case for failure to provide requested verifications.

At hearing, Respondent testified he never received a verification request. Respondent testified he has had occasions where mail has not been delivered. Respondent testified he had never attempted to hide assets from the Department. This is supported by the fact that he actually listed all of the assets in question. Respondent testified that, if he had received a request for information such as a verification request, he would have happily supplied the information. Respondent was unaware of any issue with his FAP benefits.

According to Department policy located in BAM 130, p. 1 (July 2011), verifications are usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. BAM 130, p. 2 (July 2011), requires the Department to tell the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3

(July 2011). The client must obtain required verification, but the Department must assist if the client needs and requests help. If neither the client nor the Department can obtain verification despite a reasonable effort, the Department is to use the best available information. If **no** evidence is available, the Department is to its best judgment. BEM 400, p. 4 (October 2011), indicates the FAP asset limit is \$5,000. BEM 400, p. 6 (October 2011), requires an asset to be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 28 (October 2011), indicates there is a \$15,000 limit on countable vehicles owned by the FAP group. The Department is to enter the fair market value of all licensed and unlicensed vehicles and the mileage. They are **not to** allow for options such as low mileage, automatic transmission, power windows and power locks. Bridges adds together the fair market value of all licensed and unlicensed vehicles which are not excluded and subtracts \$15,000 to determine the countable value; see **FAP Vehicle Exclusions**. If the countable value exceeds \$15,000, the excess is applied towards the \$5,000 asset limit. For instance, the value of the client's countable vehicles equals \$17,000. The remaining amount of \$2,000 is counted towards the \$5,000 asset limit. A licensed vehicle is excluded if the sale of the vehicle would net an estimated return of \$1,500 or less. BAM 400, p. 45 (October 2011). When determining the value of a vehicle, the Department can utilize Kelley Blue or NADA Book at wholesale (trade-in) value. The Department is not to add the value of optional equipment, special equipment or low mileage when determining value. The Department should enter the greater of actual mileage or 12,000 per year. For FAP, the Department is to accept the client's statement on the actual mileage. BEM 400, p. 42 (October 2011), policy indicates that, for FAP, the Department is to verify assets at semi-annual and mid-certification contacts **only** if a change is reported.

After reviewing the evidence presented, this Administrative Law Judge finds Respondent's testimony regarding non-receipt of the verification checklist credible. As noted, Respondent had reported the assets in question at application. There is no evidence to demonstrate that Respondent would have refused to provide verifications if a request had been received. Therefore, the Department's request for recoupment is denied as the Department has not demonstrated that it complied with policy and properly requested verifications from Respondent. Since the request for verification is found to have not been received by Respondent, the alleged basis for closure is not supported and, therefore, no overissuance has been demonstrated.

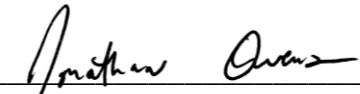
This Administrative Law Judge would further hold that the Department would have been in error to close Respondent's FAP case even if Respondent had truly failed to return the verification request after receipt of the request. The Department policy, as indicated above, restricts the Department from requesting such verification for FAP cases unless it is at semi-annual and mid-certification when a change is reported. In the instant case, the Department did not allege the question of asset value came from a reported change at a semi-annual or mid-certification contact. Further, for purposes of the vehicle value, the Department had means to determine asset ownership through a Secretary of State clearance and the ability, as outlined in the above policy, to determine vehicle values.

The Department failed to demonstrate any attempt was made to determine if there were excess assets.

DECISION AND ORDER

Accordingly, the Department is REVERSED.

The Department request to initiate collection is DENIED for the above-stated reasons.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 24, 2014

Date Mailed: February 24, 2014

NOTICE OF APPEAL: The Respondent 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 Respondent 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

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

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639

2013-226/JWO

Lansing, Michigan 48909-07322

JWO/pf

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]