

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-39409
Issue No.: 3006, 6006
Case No.: [REDACTED]
Hearing Date: February 25, 2014
County: Wayne-17

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

Upon a hearing request by [REDACTED] 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 February 25, 2014 from Lansing, Michigan. Participants on behalf of the Department included [REDACTED] (Recoupment Specialist) and [REDACTED] (Hearing Coordinator for Wayne County DHS Greenfield-Joy District). Respondent participated via telephone and provided testimony.

ISSUE

Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Child Development and Care (CDC) 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 and CDC benefits from the Department.
2. The Department alleges Respondent received an OI of FAP and CDC benefits during the period of July 1, 2007 through August 1, 2008 due to Department's error.
3. On May 7, 2012, Wayne County Circuit Court [REDACTED] entered an Order of Probation (Felony) which: (1) sentenced Respondent to: 5 years' probation for Welfare Fraud (MCL §400.602B); (2) required Respondent perform community service and (3) ordered Respondent pay restitution to the Department.

4. The Department alleges that Respondent currently has a FAP OI in the amount [REDACTED] and a CDC OI of [REDACTED] both of which are 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.

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 (7-1-2013). 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). BAM 700, p 1 (7-1-2013).

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700, p 4 (7-1-2013). If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4 (7-1-2013). Agency errors will be assigned to the provider or the client depending on the type of agency error that occurred. BAM 700, p 5 (7-1-2013).

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 (7-1-2013). For CDC and FAP, agency error OI's are not pursued if the estimated OI amount is less than \$250 per program. BAM 700, p 4 (7-1-2013).

CDC agency errors and CDC provider agency errors must be pursued beginning October 1, 2006. If the CDC agency error OI period included the month of October 2006, include the months previous to October 2006 when determining the OI amount. BAM 700, p 5 (7-1-2013).

Here, the events giving rise to the instant matter is somewhat complicated. The Department's Recoupment Specialist (RS) contends that Respondent was found guilty of an intentional program violation (IPV) concerning FAP and CDC benefits. According to the RS, Respondent fraudulently obtained an OI of FAP in the amount of \$ [REDACTED] and CDC benefits in the amount of \$ [REDACTED] during the period of July, 2007 through August, 2008. According to the RS, Respondent's IPV the Wayne County Prosecuting Attorney charged Respondent with felony Welfare Fraud (MCL §400.602B). Eventually, Respondent pled guilty, was sentenced to probation and ordered to pay the restitution to the Department in the form of installment payments as a condition of her probation. The RS contends that the Department discovered that an agency error occurred with

regard to Respondent's welfare fraud/IPV-related debts concerning FAP and CDC. According to the RS, a previous RS assigned to the case failed to timely and properly authorize Respondent's IPV cases as collectible debts and it was not discovered until the Department conducted a review on June 19, 2012. The Department then properly authorized the claims (FAP and CDC) and sent Respondent a corrected notice.

Respondent did not challenge the Department's factual assertions. Rather, Respondent, on the other hand, contends that she had been making regular [REDACTED] monthly payments to the Department based on the terms of her probation. Respondent felt that the instant hearing was not necessary because she had already pled guilty to welfare fraud had been making restitution payments to the Department. She also felt as though the Department's efforts in this matter resulted in an additional penalty or sentence against her following her guilty plea. Respondent did not specifically challenge the Department's calculations; nor did she refute the current OI amounts alleged by the Department.

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 NW 2d 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. There is no dispute that Respondent received an OI of FAP and CDC benefits. The initial FAP and CDC OIs were due to Respondent's fraudulent activity which led the Wayne County Prosecutor to bring a felony welfare fraud charge against Respondent. Subsequently, the Department failed to properly record, process and authorize the OI debts; which can fairly be characterized as an agency error. The record evidence also shows that Respondent had made several restitution payments to the Department following her conviction for felony welfare fraud. The testimony of the RS was credible and was corroborated by the record evidence that showed Respondent's initial FAP OI was \$ [REDACTED] and the CDC OI was \$1 [REDACTED] during the period of July, 2007 through August, 2008. However, Respondent provided copies of receipts which demonstrated that she had been making monthly payments such that her OI amounts should be reduced. According to the RS, at the time of the hearing Respondent's OI balance for FAP was now \$ [REDACTED] and the CDC OI balance was \$ [REDACTED].

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 and CDC benefit OI to Respondent totaling \$ [REDACTED] (\$ [REDACTED] FAP OI + \$ [REDACTED] CDC OI).

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

The Department is ORDERED to initiate collection procedures, if not already done, 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: March 4, 2014

Date Mailed: March 4, 2014

NOTICE OF APP EAL: 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.

2013-39409/CAP

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
Lansing, Michigan 48909-07322

CAP/las

cc:

