

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201345494
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: December 17, 2013
County: Kent

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

Upon a hearing request by the Department of Human Services (Department) to establish an over issuance (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. Respondent appeared and testified. Participants on behalf of the Department included [REDACTED]. The file sent from DHS and scheduled for this hearing contains three separate requests for hearing from Claimant, for three separate alleged over-issuance amounts associated with three separate over-issuance periods. This Decision and Order will address the first of the three separate alleged over-issuances between May 1, 2010 and June 30, 2010. The two other alleged over-issuances, October 1, 2010 – October 31, 2010, and November 1, 2010 – July 31, 2011 are dismissed without prejudice.

ISSUE

Did Respondent receive a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits from May 1, 2010, to June 30, 2010, which the Department is entitled to recoup?

FINDINGS OF FACT

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

1. May 1, 2010, to June 30, 2010, has been properly calculated as the over-issuance period.

2. Claimant was a recipient of Food Assistance Program (FAP) benefits from May 1, 2010 to June 30, 2010.
3. Claimant received a [REDACTED] over-issuance of Food Assistance Program (FAP) benefits during the over-issuance period because the Client did not properly report earned income.

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.

During this hearing Claimant asserted that she reported the income she received through Kelly Services during this (May and June 2010) over-issuance period. Make a specific finding on this issue is required to determine if the over-issuance amount is correct. In a Food Assistance Program (FAP) over-issuance budget with properly reported earned income, only 80% of the reported earned income is used to determine a proper FAP issuance. In this case, the FAP over-issuance budgets used the actual earned income as unreported and all of the earned income is used to determine a proper benefit issuance. When specifically asked, Claimant testified that she does not remember the date she asserts she reported the income. It is noted that evidence applicable to the second alleged over-issuance period, shows that in September 2010, the Department case worker recorded that Claimant reported a job.

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). Moreover, 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). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

Based on the totality of the evidence in the record, this Administrative Law Judge is not convinced that Claimant reported her employment during May and June 2010 as required. Therefore, the Food Assistance Program (FAP) over-issuance budgets for May and June 2010 are correct.

A detailed analysis of the evidence presented, applicable Department policies, and reasoning for this decision are contained in the recorded record. During the hearing the parties present were informed of the manner in which the three separate alleged over-issuances would be addressed.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, if any, finds that the Department did establish a Food Assistance Program (FAP) benefit OI to Respondent totaling [REDACTED].

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED** and may proceed with collection of this over-issuance in accordance with Department policy.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 01/09/2014

Date Mailed: 01/09/2014

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.

201345494/GFH

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

GFH/sw

cc:

