

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-50776
Issue No.: 3006
Case No.: [REDACTED]
Hearing Date: March 4, 2014
County: Calhoun

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 March 4, 2014 from Lansing, Michigan. Participants on behalf of the Department included [REDACTED] (Recoupment Specialist). Participants on behalf of Respondent included [REDACTED] (Respondent) and [REDACTED] ([REDACTED]).

ISSUE

Did Respondent receive an overissuance (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 of October 1, 2010 through April 30, 2011 due to Department's error.
3. The Department alleges that Respondent received a \$ [REDACTED] OI that is still due and owing to the Department.
4. The Department requested a hearing on June 3, 2013.

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.

Effective April 1, 2011, the Department had a policy change regarding FAP eligibility for students. Clients in “student status” are no longer eligible to receive FAP benefits based solely on an approved education plan. BEM 245. A person is in student status if the person is 18 through 49 years old and enrolled half-time or more in a: (i) vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate; or a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245.

In order for a person in student status to be eligible for FAP benefits, they must meet **one** of the following criteria:

- (1) Receiving FIP benefits;
- (2) Enrolled in an institution of higher education as a result of participation in an approved employment-related activities, a JTPA program, a program under Section 236 of the Trade Readjustment Act of 1974, or another State or local government employment and training program;
- (3) Physically or mentally unfit for employment;
- (4) Employed for at least 20 hours per week and paid for such employment;
- (5) Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours;
- (6) Participating in an on-the-job training program;¹
- (7) Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year;²

¹ A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer. BEM 245.

² To qualify under this student status eligibility provision, the student must be approved for work study during the school term and anticipate actually working during that time, unless exempted because the student: (i) starts the month the school term begins or the month work study is approved, whichever is later; (ii) continues until the end of the month in which the school term ends, or when you become aware that the student has refused a work-study assignment; (iii) remains between terms or semesters when the break is less than a full month, or the student is still participating in work study during the break. BEM 245.

- (8) Providing more than half of the physical care of a group member under the age of six;
- (9) Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to enable the person to attend class and work at least 20 hours per week or participate in a state or federally-financed work study program during the regular school year;
- (10) A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does **not** live with his or her natural, adoptive or stepparent. BEM 245.

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 (1-1-2011). 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 (1-1-2011).

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700, p 4 (1-1-2011). 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 (1-1-2011). If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4 (1-1-2011).

Here, the Department contends that Respondent received an OI of FAP benefits due to an agency error. Specifically, the Department asserts that due to a "system error" Respondent's fiancé, who was also a FAP group member at the time, continued to receive FAP despite being an ineligible student. Respondent and her fiancé, on the other hand, argue that they acted properly at all times and timely reported his student status to 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 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 evidence shows that Respondent's fiancé was a group member and was a [REDACTED] who attended [REDACTED] during the relevant time period. The record also shows that Respondent's [REDACTED] received FAP, but that he did not meet the eligibility requirements under BEM 245. The

substantial, material and competent evidence, based on the whole record, indicates that, due to an agency error, Respondent's group received an OI of FAP benefits during the period of October 1, 2010 through April 30, 2011.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, 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.



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

Date Signed: March 7, 2014

Date Mailed: March 7, 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.

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:

