

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201356050
Issue No: 3006
Case No: [REDACTED]
Hearing Date: March 6, 2014
Allegan County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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 March 6, 2014 from Lansing, Michigan. Respondent appeared and provided testimony. The department was represented by [REDACTED] a recoupment specialist with the department's Allegan County office.

ISSUE

Whether Respondent received an over issuance (OI) of Food Assistance Program (FAP) benefits that the department is entitled to recoup?

FINDINGS OF FACT

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

1. Respondent was a recipient of FAP benefits at all times relevant to this matter.
2. On March 2, 2011, Respondent applied for FAP assistance on behalf of herself, her husband, daughter, son, two granddaughters, and a fifth child over whom she had temporary custody. Respondent also applied for Family Independence Program (FIP), Child Development Care (CDC), and Medical Assistance (MA) benefits on behalf of this fifth child. In doing so, Respondent reported that she was employed at UNI PAC, Inc., and her husband was employed at Falcon Corporation. (Department Exhibit 8, pp. 47-68)
3. On March 25, 2011, the Department notified Respondent that she was a designated "simplified reporter" required to report to her specialist if/when her FAP household's gross income exceeds the monthly income limit of \$ [REDACTED] (Department Exhibit 7, pp. 41-46)

4. On December 8, 2011, the Department discovered through Respondent's notification that Respondent failed to timely report her husband's second job with Harmony Enterprises Inc, which employment began on June 7, 2011 and the earnings from which resulted in Respondent's FAP household exceeding the simplified reporting income limit for the period June 1, 2011 through December 31, 2011. (Department Exhibit 3, pp. 23-24; Department Exhibit 4, pp. 25-32; Department Exhibit 5, pp. 33-38; Department Exhibit 6, pp. 39-40)
5. On July 3, 2013, the Department mailed Respondent a written notice (DHS-4358-A) that she received an over issuance of FAP benefits in the amount of \$ [REDACTED] for the time period June 1, 2011 through December 31, 2011 as a result of client error.
6. On July 3, 2013, Respondent submitted a hearing request, protesting the department's determination that she must repay the FAP over-issuance.

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

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 of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Actual income is income that was already received. Prospective income is income not yet received but expected. Prospective budgeting is the best estimate of the client's future income. BEM 505. Moreover, the Department allows shelter expenses when the FAP group has a shelter expense or contributes to a shelter expense. BEM 554. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, and lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554.

An over issuance is the amount of benefits issued to the client group in excess of what they were eligible to receive. BAM 705. The amount of the over issuance is the amount of benefits the group actually received minus the amount the group was eligible to

receive. BAM 720. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the over issuance. BAM 700.

Department errors are caused by incorrect actions by the Department. BAM 705. Department error over issuances are not pursued if the estimated over issuance is less than \$250 per program. BAM 705. Client errors occur when the customer gave incorrect or incomplete information to the Department. Client errors are not established if the over issuance is less than \$125 unless the client group is active for the over issuance program, or the over issuance is a result of a quality control audit finding. BAM 700.

In this case, at the March 6, 2014 hearing, the Department's representative, recoupment specialist, Annette Fullerton, provided testimony and documentary evidence establishing that, on December 8, 2011, the Department discovered through Respondent's notification that Respondent failed to timely report her husband's second job with Harmony Enterprises, Inc, which employment began on June 7, 2011 and the earnings from which resulted in Respondent's FAP household exceeding the simplified reporting income limit for the period June 1, 2011 through December 31, 2011. Respondent's failure to timely report these employment earnings resulted in Respondent's receipt of an over issuance of FAP benefits in the amount of \$1,242.00 for this time period.

In response to the Department's presentation, Respondent did not disagree with the fact that she failed to timely report her husband's employment earnings from his employment with Harmony Enterprises, Inc., when he began such employment in June 2011. However, Respondent testified that she should have never received FAP benefits for a FAP group size of six when she only applied for such benefits on behalf of one child over whom she had temporary custody. Respondent further expressed frustration at the unfairness of her having to repay an over issuance of FAP benefits that she received for a child whose care would have cost the state more money had Respondent not taken this child in and provided her with food and shelter.

This Administrative Law Judge has reviewed the assistance application that Respondent submitted on March 2, 2011 and finds that Respondent did indeed apply for FAP assistance on behalf of herself, her husband, daughter, son, two granddaughters, and a fifth child over whom she had temporary custody.

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).

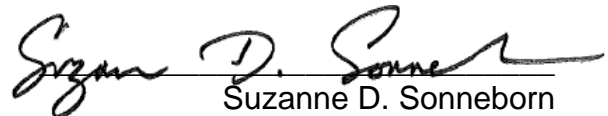
This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and must note that, notwithstanding Respondent's testimony regarding principles of fairness, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

Accordingly, based on the competent, material, and substantial evidence presented during the the March 6, 2014 hearing, the Department properly determined that Respondent received an over issuance of FAP benefits in the amount of \$ [REDACTED] for the time period June 1, 2011 through December 31, 2011 as a result of client error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly determined that Respondent received an over issuance of FAP benefits in the amount of \$ [REDACTED] for the time period June 1, 2011 through December 31, 2011, which the Department is required to recoup. Accordingly, the department's recoupment of Respondent's over issuance of FAP benefits in the amount of \$ [REDACTED] is **UPHELD** and the Department is **ORDERED** to initiate collection procedures in this amount in accordance with Department policy.

It is **SO ORDERED**.



Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 14, 2014

Date Mailed: March 14, 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:

201356050/SDS

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

SDS/hj

cc:

