

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-12977
Issue No.: 3006
Case No.: [REDACTED]
Hearing Date: March 26, 2014
County: Muskegon

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 three-way telephone hearing was held on March 26, 2014 from Lansing, Michigan. Participants on behalf of the Department included [REDACTED] (Recoupment Specialist) and [REDACTED] (Assistance Payments Supervisor). Participants on behalf of Respondent included [REDACTED] (Respondent) and [REDACTED] (Respondent's mother).

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 August 1, 2012 through July 31, 2013 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 November 12, 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.

People convicted of certain crimes, fugitive felons, and probation/parole violators are not eligible for assistance. BEM 203, p 1 (10-1-2011). BEM 203 at page 2 provides that for FAP, “[a]n individual convicted of a felony for the use, possession, or distribution of controlled substances **two or more times** will be permanently disqualified if both offenses occurred after August 22, 1996.” (With emphasis added).

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 (12-1-2011). 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 (12-1-2011).

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700, p 4 (12-1-2011). If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4 (12-1-2011). 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 (12-1-2011).

Here, the Department contends that Respondent received an OI of FAP benefits due to an agency error. According to the Department, Respondent reported that she had more than 1 felony conviction involving a controlled substance in her assistance application dated August 3, 2011. The Department further contends that it approved Respondent’s application and issued FAP benefits to Respondent although she was ineligible due to a criminal justice disqualification. Respondent, on the other hand, argues that she was not told about this policy when she applied for FAP. Respondent also contends that the Department has miscalculated the amount of her FAP OI as she claims to have had \$ [REDACTED] on her Electronic Benefit Transfer (EBT) FAP card when she was informed about the alleged OI. Respondent claims that she did not use this \$ [REDACTED] which remained on her card at the time.

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 record evidence shows that there is no dispute that Respondent was ineligible for FAP during the period indicated. The record shows that Respondent did, in fact, have two or more felony convictions involving drugs and that they occurred after August 22, 1996. Respondent does not challenge the Department's contention that she was ineligible for FAP as defined by BEM 203. Although Respondent argues that the FAP OI should be \$ [REDACTED] rather than \$ [REDACTED] because she had \$ [REDACTED] remaining on her EBT card, there is no evidence on the record to support this contention. The substantial, material and competent evidence, based on the whole record, indicates that Respondent received an OI of FAP benefits during the period of August 1, 2012 through July 31, 2013 due to department error.

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 at least \$ [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.



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

Date Signed: April 3, 2014

Date Mailed: April 3, 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:

