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

IN THE MATTER OF:

[redacted]

Reg. No: 201415079
Issue No: 3006
Case No: [redacted]
Hearing Date: March 27, 2014
Isabella 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 27, 2014 from Lansing, Michigan. Respondent appeared and provided testimony. The Department was represented by [redacted] a recoupment specialist with the Department's Isabella 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 August 8, 2011, the Department discovered that, due to agency error, the Department failed to properly budget Respondent's timely report of her employment earnings from her employment at [redacted] (Department Exhibit 5, p. 39; Department Exhibit 6, p. 40; Department Exhibit 7, pp. 41-49; Department Exhibit 8, pp. 50-51; Department Exhibit 9, pp. 52-71; Department Exhibit 10, p. 72; Department Exhibit 11, pp. 73-74; Department Exhibit 12, p. 75)

3. As a result of the Department's error, Respondent received an over issuance of FAP benefits in the amount of $[redacted] for the period of October 1, 2011 through April 30, 2012. (Department Exhibit 3, pp. 9-10; Department Exhibit 4, pp. 11-38)

4. On November 7, 2013, the Department mailed Respondent a written notice (DHS-4358-A) that, due to agency error, she received an over issuance of FAP benefits in the amount of $[redacted] for the period of October 1, 2011 through April 30, 2012. (Department Exhibit 2, pp. 4-8)

5. On November 18, 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 27, 2014 hearing, the Department's representative, recoupment specialist Rebecca Smalley, provided testimony and documentary evidence establishing that, on August 8, 2011, the Department discovered that, due to agency error, the Department failed to properly budget Respondent's timely report of her employment earnings from her employment at [redacted]. Ms. [redacted] further testified that, as a result of the Department's error, Respondent received an over issuance of FAP benefits in the amount of $[redacted] for the period of October 1, 2011 through April 30, 2012.

In response to the Department's presentation, Respondent did not disagree with the fact that she received an over issuance of FAP benefits in the amount specified by Ms. [redacted] However, Respondent expressed frustration at the unfairness of her having to repay an over issuance of FAP benefits that she received as a result of the Department's error, when Respondent properly fulfilled her reporting responsibilities with respect to her employment earnings.

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 March 27, 2014 hearing, the Department properly determined that Respondent received an over issuance of FAP benefits in the amount of $[redacted] for the period of October 1, 2011 through April 30, 2012, as a result of Department 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 period of October 1, 2011 through April 30, 2012, 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 28, 2014

Date Mailed: March 31, 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

SDS/hj

cc: [redacted]