

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20148171
Issue No: 3000, 3006
Case No: [REDACTED]
Hearing Date: March 20, 2014
Calhoun 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. Following due notice mailed to Respondent at his last known address on file with the Department, which notice was not returned to the Michigan Administrative Hearing System as undeliverable mail, a telephone hearing was held on March 20, 2014 from Lansing, Michigan. Respondent did not appear. This matter having been initiated by the Department and due notice having been provided to Respondent, the hearing was held in Respondent's absence in accordance with Department of Human Services Bridges Administrative Manual (BAM) 725, pp. 13-17. The Department was represented by [REDACTED] [REDACTED] a recoupment specialist with the Department's Calhoun 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 December 7, 2012, the Department determined that Respondent failed to timely and accurately report his change of residency, resulting in his receipt of an over issuance of FAP benefits in the amount of \$ [REDACTED] for the time period March 1, 2012 through July 31, 2012. (Department Exhibit 2, pp. 29-32)
3. On October 23, 2013, the Department mailed Respondent a written notice (DHS-4358-A) that, due to client error, he received an over issuance of FAP benefits in

the amount of \$ [REDACTED] for the time period March 1, 2012 through July 31, 2012. (Department Exhibit 1)

4. On October 23, 2013, Respondent submitted a hearing request, protesting the department's determination that he must repay a FAP over issuance.
5. The Department provided the Administrative Law Judge with a hearing packet that contained the following: Hearing Summary, Respondent's Request for Hearing, Claim details, EBT History for the period December 17, 2012 through January 20, 2012, Assistance Application dated November 18, 2011, and October 23, 2013 Notice of Overissuance paperwork. No other documents relating to the Department's debt collection hearing request were contained in the hearing packet, including the Over Issuance Budget establishing the amount of the over issuance, or the a Benefit Issuance Summary, or the EBT History for the alleged fraud period. (Hearing Packet)

CONCLUSIONS OF LAW

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

The application forms and each written notice of case action inform clients of their right to a hearing. BAM 600. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses. BAM 600. The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed it must specify:

- The action being taken by the department.
- The reason(s) for the action.
- The specific manual item(s) that cites the legal base for an action, or the regulation, or law itself; see BAM 220.

The Michigan Administrative Hearing System (MAHS) may grant a hearing on any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.

- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. BAM 600.

For each hearing not resolved at a prehearing conference, the department is required to complete a Hearing Summary (DHS-3050). BAM 600. In the hearing summary, all case identifiers and notations on case status must be complete; see RFF 3050. The DHS-3050 narrative must include all of the following:

- Clear statement of the case action, including all programs involved in the case action.
- Facts which led to the action.
- Policy which supported the action.
- Correct address of the AHR or, if none, the client.
- Description of the documents the local office intends to offer as exhibits at the hearing. BAM 600.

During the hearing, the participants may give opening statements. BAM 600. Following the opening statement(s), if any, the ALJ directs the DHS case presenter to explain the position of the local office. BAM 600. The hearing summary, or highlights of it, may be read into the record at this time. BAM 600. The hearing summary may be used as a guide in presenting the evidence, witnesses and exhibits that support the Department's position. BAM 600. Department workers who attend the hearings are instructed to always include the following in planning the case presentation:

- An explanation of the action(s) taken.
- A summary of the policy or laws used to determine that the action taken was correct.
- Any clarifications by central office staff of the policy or laws used.
- The facts which led to the conclusion that the policy is relevant to the disputed case action.
- The DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights.

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. The ALJ issues a final decision unless the ALJ believes that the applicable law does not support DHS policy or DHS policy is silent on the issue being considered. BAM 600. In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision. BAM 600.

In the instant case, the Department requested a hearing to establish that Respondent received an over issuance of FAP benefits and to request recoupment of that over issuance amount. However, the Department failed to provide any documents establishing a basis for the Department's determination that Respondent was even issued any FAP benefits during the alleged over issuance period. Without such documentation in the hearing packet, the Administrative Law Judge is unable to make a reasoned, informed decision regarding the issue at hand. It should be noted that, at the March 20, 2014 hearing, the Department's representative, recoupment specialist Trevor Kelly, did indeed recognize these shortcomings in the Department's case, particularly the absence of Respondent's EBT Bridge card usage history during the time period in question to establish that Respondent was in fact out of state.

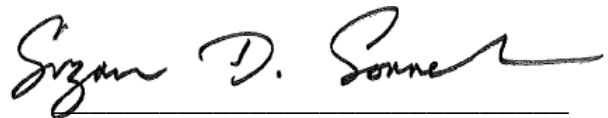
Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not timely provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, and for the reasons stated on the record, is unable to decide whether the Department acted in accordance with policy in determining that Respondent received an over issuance of FAP benefits.

Therefore, the Department's October 23, 2013 determination that Respondent received an over issuance of FAP benefits is **REVERSED** and the Department is **ORDERED** to cease any collection procedures in this regard in accordance with Department policy.

It is **SO ORDERED**.



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

Date Signed: March 27, 2014

Date Mailed: March 27, 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.

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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:

