

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-009750
Issue No.: 3006
Case No.: [REDACTED]
Hearing Date: February 10, 2015
County: Wayne-District 18

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

Following Respondent's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 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, telephone hearing was held on February 10, 2015, from Lansing, Michigan. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Recoupment Specialist.

Participants on behalf of Respondent included [REDACTED] and her husband [REDACTED].

ISSUE

Did the Department properly determine that the Respondent received an overissuance 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. On September 14, 2012, the Respondent submitted an application for Food Assistance Program (FAP) benefits as a group of five.
2. On November 1, 2012, the Department sent the Claimant a Simplified Six-Month Review (DHS-1046) that included instructions to report increases in household income.
3. The Respondent was a Food Assistance Program (FAP) recipient from February 1, 2013, through June 30, 2013, and received benefits totaling \$ [REDACTED].
4. On July 2, 2014, the Department sent the Respondent a Notice of Overissuance (DHS-4358-A).
5. The Respondent reported to the Department that her husband was absent from her household from November 1, 2013, through June 30, 2014.

6. The Respondent was a Food Assistance Program (FAP) as a group of four from November 1, 2013, through June 30, 2014, and received benefits totaling \$ [REDACTED] during this period.
7. On July 9, 2013, the Respondent submitted an application for Food Assistance Program (FAP) benefits as a group of five.
8. The Respondent reported to the Department that her husband had rejoined her household as of June of 2014.
9. On August 14, 2014, the Department received the Respondent's request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits.

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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. An agency error is caused by incorrect action (including delayed or no action) by Department staff or department processes. A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. Client and agency errors are not pursued if the estimated amount is less than \$250 per program. Department of Human Services Bridges Administrative Manual (BAM) 700 (May 1, 2014), pp 1-9.

Overissuance balances on inactive cases must be repaid by lump-sum or monthly cash payments unless collection is suspended. Department of Human Services Bridges Administrative Manual (BAM) 725 (July 1, 2014), p 8.

The Respondent applied for Food Assistance Program (FAP) benefits on September 14, 2012, as a group of five that included her husband. The Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from February 1, 2013, through June 30, 2013.

On November 1, 2012, the Department sent the Respondent a Simplified Six-Month Review (DHS-1046). The Respondent had the opportunity to report changes to her household that affected her eligibility to receive benefits. The Department also supplied the Respondent with instructions of when she was required to report changes to her

household income. No evidence of any reports from the Respondent of changes to her household income was presented on the record.

The Department determined that the Respondent received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from February 1, 2013, through June 30, 2013, that were not based on the actual income received by the Respondent's benefit group. The Department determined if the Respondent's actual income had been used to determine her eligibility for benefits during this period, she would have been eligible for only \$ [REDACTED] of FAP benefits. On July 2, 2014, the Department notified the Respondent of its intent to recoup \$ [REDACTED] of FAP benefits.

The Respondent did not dispute the actual earnings received by members of her benefits group but she and her husband testified that they were not aware of any increase of earnings that needed to be reported to the Department.

Whether the Respondent was aware of circumstances that she was required to report to the Department, or whether it was a mistake that caused the overissuance of benefits is not relevant here. The Department presented substantial evidence that the Respondent received Food Assistance Program (FAP) benefits from February 1, 2013, through June 30, 2013, that she was not eligible for based on the actual earnings of her benefit group. The Department is obligated to recoup these benefits.

The Respondent reported to the Department that her husband was absent from her household from November 1, 2013, through June 30, 2014. The Respondent received benefits as a group of four totaling \$ [REDACTED] from November 1, 2013, through June 30, 2014.

The Department's representative testified that the Respondent's husband maintained an address on file with the Michigan Secretary of State's office and his employer that was consistent with the Respondent's address. The Department's representative testified that the husband changed his address to that of his wife when she reported a move to her current address. The Department's representative testified that the husband was not added back to the benefit group until after they were confronted with allegations of an overissuance.

The Respondent testified that she reported that she and her husband had temporarily separated and that he was out of her household from November 1, 2013, through June 30, 2014.

The Respondent's husband testified that he left his wife's household and was homeless during the period he was out of the home. The Respondent testified that he lived with other family members on a temporary basis until he reconciled with his wife and they moved to a new home. The husband testified that the new home required repairs to make it livable.

Whether the Respondent's husband had a duty to report a change of address at a Secretary of State office or with his employer is not relevant to this hearing.

Department policy does not prohibit a Food Assistance Program (FAP) recipient from allowing another person to use their address as a mailing address while not living at that location.

This Administrative Law Judge finds the testimony of the Respondent and her husband to be consistent with the verified facts as reported to the Department. The Department alleges that the Respondent's husband was present in her home and that his income was not applied to her eligibility for benefits. If this is true, then the Respondent must have intentionally misled the Department to believe that her husband had left the home while he was actually living there. The Department has not alleged fraud here.

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). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), cert den, 318 US 783 (1943).

The Respondent's testimony is consistent with the verifiable facts presented on the record. The Department's allegations are based on records of the husband's mailing address of record and the Respondent's testimony includes a plausible explanation for these circumstances. This Administrative Law Judge finds that the Department has failed to establish that the Respondent received an overissuance of Food Assistance Program (FAP) benefits from November 1, 2013, through June 30, 2014.

In conclusion, the Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it determined that the Respondent received an overissuance of Food Assistance Program (FAP) benefits from February 1, 2013, through June 30, 2013, totaling 1,584.


Furthermore, the Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that the Respondent received an overissuance of Food Assistance Program (FAP) benefits from November 1, 2013, through June 30, 2014 totaling \$ [REDACTED]

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the overissuance of Food Assistance Program (FAP) from February 1, 2013, through June 30, 2013, totaling \$ [REDACTED] and **REVERSED IN PART** with respect to the overissuance of Food Assistance Program (FAP) benefits from November 1, 2013, through June 30, 2014, totaling \$ [REDACTED]

The Department is ORDERED to initiate collection procedures for a [REDACTED] overissuance in accordance with Department policy.

The Department is ORDERED to delete the OI and cease any recoupment action for the period of November 1, 2013, through June 30, 214.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Acting DHS Director
Department of Human Services

Date Signed: **2/27/2015**

Date Mailed: **2/27/2015**

KS/las

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

