

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

**IN THE MATTER OF:**

████████████████████  
████████████████  
██

Reg. No.: 14-011124  
Issue No.: 3006  
Case No.: ██████████  
Hearing Date: March 23, 2015  
County: BRANCH

**ADMINISTRATIVE LAW JUDGE: Eric Feldman**

**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 23, 2015, from Detroit, Michigan. Participants on behalf of the Department included ██████████ Recoupment Specialist. Participants on behalf of Respondent included Respondent, ██████████ and Respondent's interpreter, ██████████

**ISSUE**

Did Respondent receive an 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. On August 13, 2014, the Department sent Respondent a Notice of Overissuance (OI notice) informing him of a FAP overissuance (OI) for the period of November 1, 2013 to December 31, 2013, due to client error. See Exhibit 1, pp. 6-11. The OI notice also indicated that the OI balance was ██████████ due to excess assets. See Exhibit 1, p. 6.
3. On September 4, 2014, Respondent filed a hearing request, protesting the Department's action. See Exhibit 1, p. 1.

4. On September 17, 2014, DHS requested a debt collection hearing.

### **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 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 they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715 (July 2014), p. 6.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2013), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 9. These include, but are not limited to, changes in assets. BAM 105, p. 9.

In this case, Department policy allows only the principal place of residence to be excluded as an asset. However, the Department alleged that Respondent failed to report another joint ownership in real property that he co-owned, which its property value resulted in excess income for the FAP benefits.

First, the Department presented verification of the second property's mortgage. See Exhibit 1, pp. 20-21. The verification indicated that the mortgage owed on the property was [REDACTED]. See Exhibit 1, p. 20. The Department also presented the state equalized value (SEV) of the property, which was \$ [REDACTED]. See Exhibit 1, pp. 22-23. Finally, the Department presented Respondent's Shelter Verification for the second property dated November 21, 2013, which showed the monthly shelter obligation was [REDACTED]. See Exhibit 1, pp. 25-26.

Second, the Department presented Respondent's application dated November 13, 2013, to show that he acknowledged his responsibility to report changes as required.

See Exhibit 1, pp. 27-51. In the application, Respondent failed to report his joint ownership of the second real property. See Exhibit 1, p. 39.

Assets must be considered in determining eligibility for FAP benefits. BEM 400 (October 2013), p. 1. Assets mean cash, any other personal property and real property. BEM 400, p. 1. Real property is land and objects affixed to the land such as buildings, trees and fences. BEM 400, p. 1.

The Department determines asset eligibility prospectively using the asset group's assets from the benefit month. BEM 400, p. 3. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 3. The FAP asset limit is \$5,000 or less. BEM 400, p. 5.

An asset must be available to be countable. BEM 400, p. 9. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 9. The Department assumes an asset is available unless evidence shows it is not available. BEM 400, p. 9.

Jointly owned assets are assets that have more than one owner. BEM 400, p. 10. An asset is unavailable if an owner cannot sell or spend his share of an asset: without another owner's consent, and the other owner is not in the asset group, and the other owner refuses consent. BEM 400, p. 10. For FAP benefits, the Department counts an equal share for each owner, unless if specified otherwise by the ownership documents (each owner's share is the amount specified). See BEM 400, p. 12.

The Department does not count real property that the FAP group is making a good-faith effort to sell. BEM 400, p. 14. All of the following must be met for the real property to be excluded:

- No reasonable purchase offer has been made.
- For active cases, the property is continuously up for sale by a real estate company, by owner, etc.).
- An actual attempt has been made to sell it at a price not higher than the fair market value.

BEM 400, p. 14.

Real property is land and objects affixed to the land such as buildings, trees and fences. BEM 400, p. 29. To determine the fair market value of real property and mobile homes, the Department uses deed, mortgage, purchase agreement or contract or State Equalized Value (SEV) on current property tax records multiplied by two, etc...See BEM 400, p. 29. For FAP cases, the value is the equity value. BEM 400, p. 29. Equity value is the fair market value minus the amount legally owed in a written lien provision. BEM 400, p. 29.

A homestead is where a person lives (unless Absent from Homestead) that they own, is buying or holds through a life estate or life lease. BEM 400, p. 31. The Department excludes only one homestead for an asset group. BEM 400, p. 32.

In this case, the Department presented Respondent's FAP assets budget. The Department calculated Respondent's real property Fair Market Value (FMV) to be [REDACTED]. See Exhibit 1, p. 16. The Department obtained this amount by taking the [REDACTED] SEV multiplied by two. See Exhibit 1, p. 22 and BEM 400, p. 29. However, the Department subtracted Claimant's the amount owed on the property (mortgage) in the amount of [REDACTED]. See Exhibit 1, pp. 20-21. This resulted in a total equity value of [REDACTED] FMV minus [REDACTED] mortgage). But, Respondent and his brother held joint ownership in the property (See Exhibit 1, pp. 20-21); therefore, the Department divided by two to obtain a total countable value of [REDACTED]. See Exhibit 1, p. 16 and BEM 400, p. 12. The Department argued the total countable asset amount of [REDACTED] exceeds the FAP asset limit of [REDACTED]. See Exhibit 1, p. 16.

At the hearing, Respondent argued that he is not the owner of the house, but that his brother is. Respondent testified that his brother had insufficient/bad credit and that he helped his brother by co-signing the loan to purchase the property. See Exhibit A, p. 1. Respondent testified that his brother pays for everything for the home, including mortgage payments, tax, insurance, etc. Finally, Respondent testified that he recorded a quit-claim deed on December 19, 2013, in order to remove Respondent and his wife off the title of the property. In fact, Respondent provided proof of the quit-claim deed that showed on December 18, 2013, Respondent and his wife signed a quit claim deed to his brother for the property at issue. See Exhibit A, p. 4.

Based on the foregoing information and evidence, the Department did not establish a FAP benefit OI to Respondent totaling \$ [REDACTED]


First, on December 18, 2013, Respondent and his spouse transferred their interest in the property to his brother by signing the quit claim deed. See Exhibit A, p. 4. At this point, Respondent and his spouse no longer had any right and claim to the property. As such, Respondent's second real property was no longer an available asset as of December 18, 2013 and therefore, not countable from this point forward. See Exhibit 1, p. 4 and BEM 400, pp. 3 and 9-10. Additionally, the Department determines asset eligibility prospectively using the asset group's assets from the benefit month. BEM 400, p. 3. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 3. Respondent's asset fell below the limit for at least one day during December 2013 because of Respondent's quit claim deed of the second property on December 18, 2013. Therefore, the Department did not establish a FAP benefit OI to Respondent totaling [REDACTED] December 2013. See Exhibit 1, p. 13.

Second, policy states that no client overissuance will be established if the amount is less than ██████ for FAP cases. See BAM 715, p. 6. The remaining OI amount for November 2013 that the Department sought from Respondent was ██████ See Exhibit 1, p. 13. However, this amount fell below the OI threshold per Department policy. See BAM 715, p. 6. Therefore, the Department is unable to pursue a FAP benefit OI to Respondent totaling ██████ November 2013. See Exhibit 1, p. 13 and BAM 715, p. 6.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not establish a FAP benefit OI to Respondent totaling \$█████.

Accordingly, the Department is REVERSED.

  
**Eric Feldman**  
Administrative Law Judge  
for Nick Lyon, Interim Director  
Department of Human Services

Date Signed: **3/24/2015**

Date Mailed: **3/24/2015**

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**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.

