

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

IN THE MATTER OF:



Reg. No.: 2014 30539
Issue No(s): 3006
Case No.: [REDACTED]
Hearing Date: September 22, 2014
County: MACOMB County DHS 36

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 telephone hearing was held on September 22, 2014, from Detroit, Michigan. Participants on behalf of the Department included [REDACTED], Regulation Agent.

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 (16), pp. (8/1/12).

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. The Department alleges Respondent received an overissuance of FAP OI during the period February 2013 through December 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.

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.

Additionally, in this case the Department alleged Agency Error when its caseworker completed an application for the Claimant, Mr. Hendricks, and opened a food assistance case despite the fact that the Claimant had a drug related Felony Conviction, which was answered correctly when the Assistance Application was completed on January 2, 2013. The Claimant's hearing request notes that "the worker filled out the paperwork and knew he had a drug conviction." BEM 203 (10/1/12) pp. 2 provides:

DRUG-RELATED FELONY FIP and FAP

1st Offense A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, **and**
- The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole, FIP benefits must be paid in the form of restricted payments and FAP benefits must be issued to an authorized representative.

2nd Offense An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996.

The Department did not provide any evidence of the conviction record of the Claimant. The application completed by the Department to "assist the Claimant" checks yes to the question "Has anyone ever been convicted of a drug related felony occurring after August 22, 1996 ? and Convicted more than once ?" answers by checking the boxes for both yes and no. Given this discrepancy and the fact that the Claimant did not complete the form, the Department did not meet its burden of proof to demonstrate two

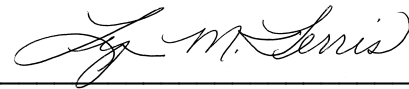
convictions of a drug related felony occurred; which would disqualify the Claimant permanently.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not meet its burden of proof to establish a FAP benefit OI to Respondent totaling \$[REDACTED] for the reasons stated on the record and for the reasons set forth in the Conclusions of Law.

DECISION AND ORDER

Accordingly, the Department is REVERSED.

The Department is ORDERED to cease any collection procedures for a \$[REDACTED] OI, and delete any overissuance.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 1, 2014

Date Mailed: October 1, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, 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:

2014-30539/LMF

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

LMF/tm

cc:

