

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

IN THE MATTER OF:

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

Reg. No.: 201433568
Issue No(s): 3006
Case No.: ██████████
Hearing Date: June 16, 2014
County: Ottawa (70)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 June 16, 2014, from Detroit, Michigan. Participants on behalf of the Department included ██████████, RS, and ██████████ ██████████ Agent with the Office of the Inspector General.

☒ Participants on behalf of Respondent included AHR ██████████, and ██████████

ISSUE

Did Respondent receive an OI of

☐ Family Independence Program (FIP)

☐ State Disability Assistance (SDA)

☒ Food Assistance Program (FAP)
benefits?

☐ Child Development and Care (CDC)

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 ☐ FIP ☒ FAP ☐ SDA ☐ CDC benefits from the Department.

2. The Department alleges Respondent received a
☐ FIP ☒ FAP ☐ SDA ☐ CDC
OI during the period September 1, 2010, through January 31, 2011 due to
☐ Department's error ☒ Respondent'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, the Department alleges that claimant did not report a change in income that occurred in July, 2010, until a review conducted in January, 2011, when respondent was assigned to a different case worker. The Department further alleged that respondent failed to report income from a second job, and vastly under-reported the income she did disclose in the report made in January, 2011.

After a review of the supplied evidence, the undersigned holds that the Department has failed to support its case by substantial evidence.

Respondent testified that she had reported all changes to the Department in a timely manner. Respondent also stated the same in interviews conducted by the Office of Inspector General (OIG).

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

The undersigned finds the respondent's statements as to the timeliness of her reporting income changes credible.

The Department submitted no evidence showing respondent had failed to report a change. The respondent has been consistent in her testimony and statements regarding when she reported the change. Respondent's caseworker changed during the time period in question, making the likelihood of a miscommunication quite reasonable. Finally, the Department has, quite frankly, a long history of losing or missing reports of changes, in the experience of the Administrative Law Judge. For these reasons, the undersigned finds that the respondent's statements that she reported all changes in income in a timely manner credible.

Furthermore, there is no evidence that respondent either failed to report income from a second job, or vastly under-reported the income disclosed through reports in January, 2011.

With regard to the first allegation of failing to report income from a second job, the only evidence of this second job are contained in documents purported to be pay records, that were submitted by the Department as Exhibit 9. These documents contain no sourcing, no provenance, and no way to tell where the numbers in question came from. They are, simply, numbers on a piece of paper with no context. There is no assurance that the numbers in question are even pay records, much less pay records belonging to the respondent.

As such, the undersigned gives Department Exhibit 9 no weight, and disregards the information contained within.

With regard to the second allegation that respondent vastly under-reported the income disclosed in January, 2011, the undersigned finds no evidence to support this contention as well.

Respondent turned in, as Exhibit A, copies of the actual pay checks received from her employer for the business in question. These checks show that respondent reported the exact amounts received during the time period in question. No other evidence exists showing that the respondent under-reported her income

As such, the Administrative Law Judge holds that the respondent did not under-report her income.

Therefore, given that the undersigned has held that the respondent reported her income in a timely fashion, and given that the undersigned has also held that the evidence does not show other income or under-reporting of income, the overissuance in the current case must be considered, at most, Agency Error, and may only be recouped under the procedures for Agency Error found in BAM 705.

However, the Department has failed to provide substantial evidence of an overissuance for which recoupment is proper.

While the Department submitted recoupment budgets, these budgets were processed according to Client Error guidelines, and are thus incorrect. Furthermore, these budgets appear to include income from the unsourced, non-provenanced, papers discussed above, that were ruled inadequate for showing respondent's income.

Therefore, the undersigned holds that the submitted recoupment budgets are incorrect and thus inadequate for proving an overissuance by substantial evidence.

Without evidence of an overissuance, the undersigned may not find overissuance of benefits, and will not authorize recoupment.

Therefore, because there is no evidence of overissuance, the undersigned finds that the Department has failed to meet their burden of proof in showing an overissuance of benefits, and declines to authorize a recoupment.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department ☒ did not establish a ☐ FIP ☒ FAP ☐ SDA ☐ CDC benefit OI to Respondent totaling [REDACTED]

DECISION AND ORDER

Accordingly, the Department is

☒ REVERSED.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 15, 2014

Date Mailed: August 15, 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:

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

RJC/tm

cc:

[REDACTED]
[REDACTED]
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