

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

IN THE MATTER OF:

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

Reg. No.: 2014-35108
Issue No(s): 3006; 3007
Case No.: ██████████
Hearing Date: September 8, 2014
County: Muskegon (00)

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 September 8, 2014, from Detroit, Michigan. Participants on behalf of the Department or DHS included ██████████, ██████████, Recoupment Specialist.

Participants on behalf of Respondent included Respondent, ██████████.

ISSUES

Did Respondent receive an OI of Food Assistance Program (FAP) benefits?

Did the Department properly mail Respondent the Notice of Overissuance dated June 2, 2014?

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. On April 14, 2014, the Department sent Respondent a Notice of Overissuance, which alleged that Respondent received a FAP OI in the amount of \$920 during

the period November 1, 2010, through March 31, 2011, due to Respondent's error. See Exhibit 1, pp. 48-52. The Notice of Overissuance alleged that Respondent failed to report earned income within 10 days. See Exhibit 1, p. 48.

3. On April 24, 2014, Respondent filed a hearing request, protesting the OI amount. See Exhibit 1, p. 55.
4. On an unspecified date, the Department discovered that Respondent had child support expenses during the alleged OI period and it did not factor such expenses in the OI calculation.
5. On an unspecified date, the Department recalculated Respondent's OI amount for the same alleged OI period due to the discovery of his child support expenses.
6. On June 2, 2014, the Department sent Respondent a Notice of Overissuance, which alleged that Respondent received a FAP OI in the amount of \$885 during the period November 1, 2010, through March 31, 2011, due to Respondent's error. See Exhibit 2, pp. 1-5. The Notice of Overissuance alleged that Respondent failed to report earned income within 10 days. See Exhibit 2, p. 1.

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.

In this case, the Department alleges that Respondent committed a client error of his FAP benefits because he failed to report his employment and wages to the Department, which caused an overissuance of FAP benefits.

On April 14, 2014, the Department sent Respondent a Notice of Overissuance, which alleged that Respondent received a FAP OI in the amount of \$920 during the period November 1, 2010, through March 31, 2011, due to Respondent's error. See Exhibit 1, pp. 48-52. The Notice of Overissuance alleged that Respondent failed to report earned income within 10 days. See Exhibit 1, p. 48.

On April 24, 2014, Respondent filed a hearing request, protesting the OI amount. See Exhibit 1, p. 55. It should be noted that the Department alleged that Respondent completed a withdrawal for his hearing request.

On an unspecified date, the Department discovered that Respondent had child support expenses during the alleged OI period and did not factor his expenses in the OI calculation.

On an unspecified date, the Department recalculated Respondent's OI amount for the same alleged OI period due to the discovery of his child support expenses.

On June 2, 2014, the Department sent Respondent a Notice of Overissuance, which alleged that Respondent received a FAP OI in the amount of \$885 during the period November 1, 2010, through March 31, 2011, due to Respondent's error. See Exhibit 2, pp. 1-5. The Notice of Overissuance alleged that Respondent failed to report earned income within 10 days. See Exhibit 2, p. 1.

At the hearing, Respondent acknowledged receipt of the Notice of Overissuance dated April 14, 2014. However, Respondent testified that he never received the subsequent Notice of Overissuance dated June 2, 2014. The Department sent both notices to Respondent's same address.

The proper mailing and addressing of a letter creates a presumption of receipt which may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

Unless recouping from the CDC provider, the Department will notify the group of a client error by sending a completed:

- DHS-4358A, Notice of Overissuance.
- DHS-4358B, Agency and Client Error Repayment Agreement.
- DHS-4358C, Overissuance Summary.
- DHS-4358D, Hearing Request for Overissuance or Recoupment Action.

BAM 715 (May and July 2014), p. 10. An explanation of the reason for overissuance, along with the manual items, must be filled out using the view pending screen in Correspondence. BAM 715, p. 10

Based on the foregoing information and evidence, it is found that the Respondent rebutted the presumption of proper mailing. Respondent credibly testified that he did

not receive the subsequent Notice of Overissuance dated June 2, 2014. As such, the Department failed to satisfy its burden of showing that it properly sent Respondent the Notice of Overissuance dated June 2, 2014. The Department is ordered to re-send Respondent the Notice of Overissuance dated June 2, 2014 and accompanying documentation (i.e., DHS-4358D, Hearing Request for Overissuance or Recoupment Action). See BAM 715, p. 10. Upon receipt of the Notice of Overissuance letter and accompanying documentation, Respondent can request another hearing to dispute the \$885 FAP OI amount. See BAM 600 (March and July 2014), pp. 4-6; BAM 715, pp. 11-12; and BAM 725 (May and July 2014), pp. 16-17.

It should be noted that this hearing decision will not address Respondent's original Notice of Overissuance dated April 14, 2014, which alleged that Respondent received a FAP OI in the amount of \$920 during the period November 1, 2010, through March 31, 2011. See Exhibit 1, pp. 48-52. The Department testified that it is pursuing the alleged OI amount of \$885 as notated in the subsequent Notice of Overissuance. Therefore, this Administrative Law Judge (ALJ) will not address the OI amount of \$920 due to the Department's subsequent actions of sending a new Notice of Overissuance dated June 2, 2014.

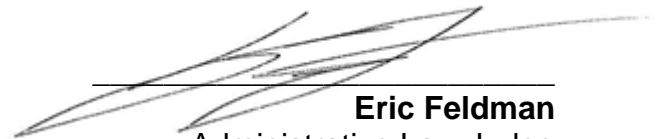
DECISION AND ORDER

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 it properly sent Respondent the Notice of Overissuance dated June 2, 2014, in accordance with Department policy.

Accordingly, the Department's decision is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Resend Respondent's Notice of Overissuance letter and accompanying documentation dated June 2, 2014, in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 26, 2014

Date Mailed: September 26, 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

EJF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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