

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

IN THE MATTER OF:

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

Reg. No.: 14-003005
Issue No.: 3006
Case No.: ██████████
Hearing Date: December 01, 2014
County: Macomb-District 20

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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, an in-person hearing was held on December 1, 2014, from Warren, Michigan. ██████████, Hearing Facilitator, appeared and testified on behalf of the Department. Respondent and ██████ ██████, her living-together-partner (LTP), appeared and testified on Respondent's behalf.

ISSUE

Did Respondent receive an overissuance (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 May 13, 2014, the Department sent Respondent a Notice of Overissuance alleging she received a FAP OI during the period August 1, 2011 to May 31, 2014, totaling \$14,253 due to client error.
3. The Department alleges that Respondent received a \$14,253 OI that is still due and owing to the Department.

4. On May 13, 2014, Respondent filed a hearing request disputing the Department's actions and alleging that any error in calculating benefits was due to agency error.

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.

As a preliminary matter, it is noted that Respondent was advised in the May 13, 2014 Notice of Overissuance that an administrative law judge had determined that the Department's actions were correct in a decision dated May 13, 2014. A review of the Michigan Administrative Hearing System (MAHS) records do not show any hearing decision issued on May 13, 2014 in connection with the Department's allegations that Respondent was overissued FAP benefits between August 2011 and May 2014. Therefore, the allegations are reviewed and addressed in the present Hearing Decision.

In this case, the Department alleges that Respondent received more FAP benefits than she was eligible to receive from August 1, 2011 to May 31, 2014 because she failed to report that the LTP was living in her household with the children during this period and, consequently, his earned income was not included in the calculation of Respondent's FAP eligibility. The Department alleges a FAP OI totaling \$14,253 for the period between August 1, 2011 and May 31, 2014.

In calculating a client's FAP eligibility and benefit allotment, the Department considers income of all FAP group members. BEM 212 (September 2010), p. 7; BEM 212 (February 2014), p. 9; BEM 556 (January 2010 and July 2013), p. 2. Parents and their children under 22 years of age who live together must be in the same FAP group. BEM 212, p. 1. In this case, the LTP is the father of two children with Respondent, at least one of which was under age 22 during the period from August 1, 2011 to May 31, 2014. Therefore, if the LTP was in Respondent's home, he would be a mandatory FAP group member and his income would be included in the calculation of the group's FAP eligibility and allotment.

At the hearing, Respondent testified that the LTP was living with her and the children for *part* of the period alleged by the Department but they were separated between January 2012 and November 2013 and the LTP was not living with her and the children during this time. Respondent credibly testified that she notified the Department in November

2013 that the LTP was moving back into her home. The LTP corroborated Respondent's testimony that he and Respondent were separated from January 2012 to November 2013. The LTP further explained that he paid part of the mortgage on the home in which Respondent resided while he was separated from her because he continued to own the home and because his children continued to reside in the home. Respondent continued to separately contribute towards the housing expense. The LTP also explained that he did not change his address on his driver's license from Respondent's address because he continued own the home and would stop by the home to visit his children and pick up his mail.

The Office of Inspector General (OIG) agent that investigated the allegations against the Respondent and the recoupment specialist who prepared the case were not at the hearing to counter Respondent's and the LTP's testimony. The redetermination Respondent completed and submitted to the Department on June 26, 2013 showing only Respondent and her two children as residing in Respondent's home is consistent with Respondent's testimony that during this time the LTP was not in the home. The Department did not present any documentary evidence supporting its allegations that Respondent misrepresented her group members during the time at issue. Because the Department failed to establish that any error in the calculation of FAP benefits was due to Respondent giving incorrect or incomplete information to the Department, the error in this case was an agency error, not client error. See BAM 700, pp. 4, 6.

Based on Respondent's testimony, the LTP was living in her household from August 1, 2011 to December 31, 2011 and from December 1, 2012 to May 31, 2014. Because the LTP is the father of a child under 22 living in home, he was a mandatory member of Respondent's FAP group. Therefore, his income would also be included in determining Respondent's FAP eligibility.

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), p. 1. The amount of the OI is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700, p. 1. With respect to alleged overissuance from August 1, 2011 to December 31, 2011 and from December 1, 2013 to May 31, 2014, the Department presented (i) a printout from the Work Number, the Department-accessible database showing employment information voluntarily reported by employers, showing the LTP's income from Home Depot during the months at issue, and (ii) FAP OI budgets showing the FAP benefits Respondent was eligible to receive if the LTP and his employment income had been included in the calculation of Respondent's FAP eligibility during each month at issue.

Because Respondent is an SSI recipient, in order to be eligible for FAP benefits, her group's net income must be less than the net income applicable to her group size. BEM 550 (September 2010 and February 2014), p. 1. Between August 2011 and September 2011, the net income limit for a FAP group size of four (Respondent, the LTP and their two children) was \$1838, and between October 2011 and December 2011 it was \$1863.

RFT 250 (October 2010 and October 2011), p. 1. Respondent testified that her daughter moved out of her home in October 2013. Between December 2013 and May 2014, the net income limit for a FAP group size of three (Respondent, the LTP and the one child remaining in the home) was \$1628. RFT (October 2013), p. 1.

A review of the FAP OI budgets for each month between August 2011 and December 2011, between December 2013 and February 2014, and for April 2014 shows that although the FAP OI budgets show the incorrect net income limit for some of the months at issue, once the LTP's income is included in Respondent's FAP eligibility calculation, and even if he is afforded a 20% earned income deduction, the group's net income for those months exceeds the applicable FAP net income limit. Therefore, Respondent was ineligible for any FAP benefits those months. The income the LTP received in March 2014 is not properly identified on the FAP OI budget for that month, and the Department's calculation of the LTP's earned income for May 2014 is not supported by the evidence presented. Therefore, the Department failed to establish a FAP OI for March 2014 and May 2014.

The Department presented a benefit summary issuance showing the monthly benefits issued to Respondent during each month at issue. The benefit issuance summary establishes that between August 2011 and December 2011 Respondent was issued FAP benefits totaling \$1459 and between December 2013 and February 2014 and in April 2014, Respondent was issued FAP benefits totaling \$1124. Therefore, the Department is entitled to recoup and/or collect from Respondent \$2583, the sum of the overissued FAP benefits from August 2011 to December 2011, December 2013 to February 2014, and April 2014.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department established a FAP benefit OI to Respondent totaling \$2583 for August 2011 to December 2011 and from December 2013 to May 2014 (excluding March 2014 and May 2014) but did not establish a FAP benefit OI for January 2012 to November 2013.

DECISION AND ORDER

Accordingly, the Department is AFFIRMED IN PART with respect to a FAP OI for August 2011 to December 2011 totaling \$1459 and for December 2013 to May 2014 totaling \$1124 and REVERSED IN PART with respect to a FAP OI for January 2012 to November 2013.

The Department is ORDERED to initiate collection procedures for a \$2583 OI in accordance with Department policy.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/22/2014**

Date Mailed: **12/22/2014**

ACE / tlf

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:

