

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-018892  
Issue No.: 3007, 3008  
Case No.: [REDACTED]  
Hearing Date: February 03, 2015  
County: INGHAM

**ADMINISTRATIVE LAW JUDGE:** Colleen Lack

**HEARING DECISION**

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 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 3-way telephone hearing was held on February 3, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] Recoupment Specialist.

**ISSUES**

Did Claimant receive an overissuance of program benefits that the Department is entitled to recoup?

Did the Department properly determine Claimant's Food Assistance Program (FAP) allotment for December 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. Claimant is an ongoing recipient of FAP.
2. The Department determined that Claimant received a FAP overissuance in the amount of \$ [REDACTED] during the period of July 2013 through February 2014.
3. The alleged overissuance was due to Department error.
4. On December 15, 2014, the Department sent notice of the overissuance and a repayment agreement to Claimant.

5. On December 26, 2014, Claimant filed a hearing request, protesting the Department's recoupment action and the amount of her current FAP monthly allotment.

### **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.

#### **Recoupment of Overissuance**

When a client group receives more benefits than it is entitled to receive, DHS must attempt to recoup the overissuance (OI). An OI is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). BAM 700, p 1 (5-1-2014).

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or DIT staff or department processes. If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4.

A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p 6.

Client and Agency error OIs are not pursued if the estimated OI amount is less than \$ [REDACTED] per program. BAM 700, p 9.

A person cannot receive FAP in more than one state for any month. BEM 222, 7-1-2013, p. 3.

Here, the Department contends that Claimant received an OI of FAP benefits due to Department's error. The Department acknowledged that when Claimant applied for FAP on July 17, 2013, she reported that she recently moved to Michigan and had been receiving FAP in the state of [REDACTED]. The Department further acknowledged that the Department worker failed to verify that Claimant's FAP case closed in [REDACTED] before approving her for FAP in Michigan. The Department asserts that Claimant was issued FAP benefits in [REDACTED] and Michigan from July 2013 to February 2014. As a person cannot receive FAP in more than one state for any month, the Michigan issued FAP was considered an OI.

Claimant testified that she cut up the [REDACTED] FAP card when she moved as she did not think that the FAP benefit could be used out of state. Claimant also explained that she did not realize FAP benefits were still being issued in [REDACTED] after her move. Claimant's testimony that she never utilized the [REDACTED] issued FAP benefits for the months of July 2013 to February 2014 is supported by the verification the Department obtained from the [REDACTED] FAP program. Further, the verification shows that the FAP benefits for that time period were expunged when the [REDACTED] FAP case closed.

Based on the verification from the [REDACTED] FAP program that the benefits issued in that state for the period of July 2013 to February 2014 were not only unused but have also been expunged, there is no longer a period that Claimant received FAP in two states. Accordingly, Claimant has only received the Michigan issued FAP benefits for those months and there is no OI to recoup.

### **December 2014 FAP allotment**

On the December 26, 2014, hearing request, Claimant also indicated she was contesting the amount of the FAP allotment for December 2014, \$ [REDACTED]

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600, 10-1-2014, p. 35. But BAM 600 also requires the Department to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 p. 35. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is merely a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

The term "burden of proof" encompasses two separate meanings. 9 Wigmore, Evidence (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, Evidence (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the

issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

In this case, the Department did not provide any evidence regarding how Claimant's December 2014 FAP benefit allotment was calculated. Accordingly, there is not sufficient evidence to enable this Administrative Law Judge to ascertain whether the Department followed policy in determining Claimant's December 2014 FAP allotment.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, the Administrative Law Judge concludes that Claimant did not receive the overissuance for which the Department presently seeks recoupment and that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Claimant's December 2014 FAP allotment.

### **DECISION AND ORDER**

Accordingly, the Department's action seeking recoupment 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. Delete the OI and cease any recoupment action.
2. Re-determine Claimant's FAP eligibility for December 2014 in accordance with Department policy.
3. Issue Claimant written notice of the FAP eligibility determination in accordance with Department policy.

4. Issue Claimant any supplement she may thereafter be due.



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**Colleen Lack**  
Administrative Law Judge  
for Nick Lyon, Interim Director  
Department of Human Services

Date Signed: **2/11/2015**

Date Mailed: **2/11/2015**

CL/hj

**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:

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 48909-8139

cc:

