

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 15-001018
Issue No.: 3008
Case No.: ██████████
Hearing Date: February 25, 2015
County: Macomb-District 20

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 telephone hearing was held on February 25, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████, Hearing Facilitator.

ISSUE

Did the Department properly reduce Claimant's monthly Food Assistance Program (FAP) benefits due to a 2010 overissuance of \$5045?

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 benefits.
2. On February 9, 2010, the Department sent Claimant a Notice of Overissuance advising her that, due to agency error, she was overissued \$5045 in FAP benefits for the period April 1, 2009 to January 31, 2010.
3. Claimant did not request a hearing within 90 days of the February 9, 2010 Notice of Overissuance.
4. The Department has subjected Claimant's FAP case to administrative recoupment and reduced her monthly FAP benefits from March 2010 ongoing.

5. On January 14, 2015, Claimant filed a request for hearing disputing the overissuance and alleging that she was unpaid FAP benefits.

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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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.

Two issues were presented by Claimant's hearing request: (i) whether the Department properly determined that she had received an overissuance of FAP benefits from April 1, 2009 to January 31, 2010 and (ii) whether she was being underissued FAP benefits as a result of the Department's administrative recoupment.

The Overissuance

In her January 14, 2015 hearing request, Claimant challenged the FAP overissuance. As discussed below, Claimant's hearing request concerning this issue is untimely.

The evidence showed that on February 9, 2010 the Department sent Claimant a Notice of Overissuance, which included a DHS-4358A, B, C and D, notifying her of a \$5045 overissuance of FAP benefits for the period April 1, 2009 to January 31, 2010. Department policy provides that, for active FAP cases, a client must timely request a hearing on a DHS-4358D, Hearing Request for Overissuance or Recoupment, according to normal hearing procedures. BAM 700 (October 2009), p. 9; BAM 705 (February 2010), p. 8. BAM 705, p. 8, 9. BAM 600 (July 2009), p. 4 provided that a hearing request must be filed anywhere in the Department within 90 days of a written notice of case action. Consistent with policy, the DHS-4358-D sent to Claimant advised her that "[i]f you request a hearing, your request must be received within 90 days from the date of this notice or it will be dismissed as untimely" (Exhibit A).

Claimant requested a hearing disputing the overissuance on January 14, 2015, nearly five years after the Notice of Overissuance was sent to her. At the hearing, Claimant testified that she first received the Notice of Overissuance when she inquired about her FAP case benefits in November 2014. However, she acknowledged that the Notice was properly addressed to her and that she resided at the address identified on the Notice at the time the Notice was sent. The Department testified that the Notice was prepared and sent by the recoupment specialist that processed Claimant's overissuance case in

the ordinary course of the Department's business. Although Claimant claimed that she sometimes had issues with her mail, the Department credibly testified that it had never been advised of any mail issue and had never received any returned mail. Under the facts presented, Claimant failed to rebut the presumption that she received the 2010 Notice, which was mailed to her in the Department's ordinary course of business. See *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270, 275-278 (1976). It is further noted that the claim activity history printout from the Department's system (Exhibit I) shows that the Department began administratively recouping the overissuance from Claimant's active FAP case on February 27, 2010 and continued to recoup from her ongoing monthly FAP benefits through January 2015, reducing the overissuance balance as of January 2015 to \$2866. Therefore, Claimant should have been aware of the ongoing reduction in benefits.

Based on the facts presented, Claimant's January 14, 2015 request for hearing challenging the overissuance was not timely filed within 90 days of the Notice of Overissuance sent to her on February 9, 2010 advising her of the overissuance. Because Claimant's request for hearing concerning the overissuance untimely, it is dismissed for lack of jurisdiction.

Recoupment Amount

In her hearing request, Claimant also alleged that she was underissued FAP benefits due to the overissuance. A client is allowed to challenge the current level of FAP benefits at any time. BAM 600 (January 2015), p. 4. Because a client is entitled to a FAP benefit for any underissuances due to an ongoing error in the calculation of her FAP benefits for up to 12 months prior to the date the client requested a hearing raising the error, based on Claimant's January 14, 2015 hearing request, her FAP benefits for the twelve-month period prior to the hearing request were reviewed. See BAM 406 (July 2013), p. 3.

At the hearing, Claimant testified that she was not challenging the information used to calculate her FAP allotment, only the Department's recoupment of the overissuance from her benefits. Active programs are subject to administrative recoupment (AR) for repayment of overissuances. BAM 725 (July 204), p. 6. Because there was a FAP overissuance in Claimant's case and Claimant was an active FAP recipient, the Department acted in accordance with Department policy when it recouped the overissuance from Claimant's ongoing FAP benefits.

With respect to the amount of the monthly recoupment, Department policy provides FAP benefits are reduced for recoupment by a percentage of the monthly FAP entitlement, which for a FAP overissuance due to agency error is 10% (or \$10, whichever is greater). BAM 725, p. 7. Administrative recoupment occurs only on current month issuances and automatically changes when the monthly issuance amount changes. BAM 725, p. 7. Furthermore, FAP supplements to restore lost benefits are automatically offset in part or in whole to repay FAP overissuances. BAM 725, p. 8; BAM 406 (July 2013), p. 1.

A review of the eligibility summary (Exhibit B), which shows the FAP benefits Claimant was eligible to receive, against the claim activity history (Exhibit I), which shows the amount the Department recouped on a monthly basis, shows that the monthly AR from Claimant's ongoing FAP benefits from January 2014 was equal to 10% of the monthly FAP allotment Claimant was eligible to receive for each of the months between January 2014 and January 2015. Further, a supplement issued on December 5, 2014 for September 2014 and November 2014 was properly recouped to offset the overissuance. Therefore, the Department acted in accordance with Department policy with respect to the amount of FAP benefits it has recouped from Claimant.

DECISION AND ORDER

Claimant's request for hearing disputing the 2010 Notice of Overissuance is DISMISSED.

The Department's calculation of the monthly FAP administrative recoupment is AFFIRMED.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/02/2015**

Date Mailed: **3/02/2015**

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:

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