

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-011616
Issue No.: 3006
Case No.: [REDACTED]
Hearing Date: June 04, 2015
County: Grand Traverse

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

Following Respondent'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, telephone hearing was held on June 04, 2015, from Lansing, Michigan. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], Recoupment Specialist. Participants on behalf of Respondent included [REDACTED] and [REDACTED].

ISSUE

Did the Department properly determine that the Respondent received an overissuance 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. On January 8, 2012, the Respondent applied for Food Assistance Program (FAP) benefits as a group of four and acknowledged that two members of the benefit group had more than one drug-related felony occurring after August 22, 1996.
2. On January 10, 2014, the Respondent submitted a Redetermination (DHS-1010) where she acknowledged that two members of the benefit group had more than one drug-related felony occurring after August 22, 1996.
3. The Respondent was an ongoing Food Assistance Program (FAP) recipient from June 1, 2013, through May 31, 2014.
4. Due to Department error, the Department issued FAP benefits from June 1, 2013, through May 31, 2014, when two of the group members should have been disqualified due to their drug-related felony convictions.

5. From June 1, 2013, through May 31, 2014, the Respondent received FAP benefits as a group of four totaling \$ [REDACTED] but would have only been eligible for \$ [REDACTED] as a group of two.
6. On August 21, 2014, the Department notified the Respondent that she had received an overissuance of FAP benefits totaling \$ [REDACTED]
7. On September 2, 2014, the Department received the Respondent's request for a hearing protesting the recoupment of the overissuance.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. An agency error is caused by incorrect action (including delayed or no action) by Department staff or Department processes. A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. Client and agency errors are not pursued if the estimated amount is less than \$250 per program. Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (May 1, 2014), pp 1-9.

Overissuance balances on inactive cases must be repaid by lump-sum or monthly cash payments unless collection is suspended. Department of Health and Human Services Bridges Administrative Manual (BAM) 725 (July 1, 2014), p 8.

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (January 1, 2015), p 2.

If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. Department of Health and Human Services Bridges Administrative Manual (BAM) 705 (July 1, 2014), p 7.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2015), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

On January 8, 2012, the Respondent applied for FAP benefits as a household of four. On this application form, the Respondent acknowledged that two group members each had more than one drug-related felony conviction occurring after August 22, 1996. The Respondent again reported these felonies on a Redetermination (DHS-1010) form on January 10, 2014. Due to Department error, the two benefit group members with more than one drug-related felony were not disqualified from the benefit group as required by BEM 203.

As a result of the Department's failure to apply the information reported by the Respondent, FAP benefits totaling \$ [REDACTED] were issued to the Respondent from June 1, 2013, through May 31, 2014. If the ineligible group members had been disqualified from the benefit group as required by Department policy, the Respondent would have been eligible for FAP benefits totaling \$ [REDACTED] as a group of two.

The Respondent did not dispute the drug-related felonies or that two of the benefit group members should have been disqualified, but argued that the Department failed to properly apply the group's earned income towards its determination of FAP eligibility during the overissuance period.

No evidence was presented on the record that the Respondent had disputed the Department's determination of her benefit group's income received from June 1, 2013, through May 31, 2014, prior to September 2, 2014. The Respondent is not entitled to a hearing to protest the Department's determination of her income during this period because more than 90 days have passed May 31, 2014, which is the end of the overissuance period.

The Department is directed by BAM 725 to use actual income received to determine an overissuance amount where improper budgeting of income caused the overissuance. In this case, the overissuance was caused by an improper group size and the Department's failure to disqualify certain group members. Therefore, this Administrative Law Judge finds that the Department properly determined the overissuance amount.

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 acted in accordance with Department policy when it determined that the Respondent received a \$ [REDACTED] overissuance of Food Assistance Program (FAP) benefits caused by Department error.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

The Department is ORDERED to initiate collection procedures for a \$ [REDACTED] Food Assistance Program (FAP) overissuance in accordance with Department policy.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/8/2015**

Date Mailed: **6/8/2015**

KS/las

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 48909-07322

cc:

