

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

IN THE MATTER OF:



MAHS Reg. No.: 15-003002
Issue No.: 3006
Agency Case No.: [REDACTED]
Hearing Date: June 04, 2015
County: Grand Traverse

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on June 4, 2015, from Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear. This matter having been initiated by the Department and due notice having been provided to Respondent, the hearing was held in Respondent's absence in accordance with Department of Health and Human Services Bridges Administrative Manual (BAM) 725 (July 1, 2014), pp. 16-17.

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. The Department alleges Respondent received an FAP OI during the period February 1, 2012, through January 31, 2014, due to Respondent's error.
3. The Department alleges that Respondent received a \$ [REDACTED] OI that is still due and owing to the Department.

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), and Department of Health and Human Services Reference Tables Manual (RFT).

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 to .3015.

When a client group receives more benefits than it is entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM 700, (May 1, 2014) p. 1. An overissuance (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.

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or DIT staff or department processes. BAM 700, p 4. 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.

Clients must cooperate with the local office in determining initial and ongoing eligibility. Clients must completely and truthfully answer all questions on forms and in interviews. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, (December 1, 2011), pp.5-7.

Client and Agency error OIs are not pursued if the estimated OI amount is less than \$250 per program. BAM 700, p 9.

Here, the Department contends that Respondent received an OI of FAP benefits due to Respondent's error. The Department asserts that Respondent failed to accurately report his assets. Specifically, the Department discovered that Respondent had property in another county valued at \$ [REDACTED] which put him over the applicable asset limit of \$5,000.00. Respondent did not report this property to the Department, such as listing this asset on any of the Assistance Applications or Redeterminations he completed.

Respondent did not appear for these hearing proceedings. However, the Department noted that Respondent has asserted that the property is not available due to a court judgement. Respondent explained to the Department that he must hold onto the property in order to receive damages he was awarded on [REDACTED], related to an arson that took place in [REDACTED].

The Investigation Report from the Office of Inspector general notes a contact with the County Clerk's office. It was confirmed that there is an order of restitution of \$ [REDACTED] pending, but there is no judicial order to collect payment from the individuals listed. It was also confirmed that Respondent would need to retain ownership of the property in order to collect any reimbursement from the perpetrators for the damages to the property that were accrued during the arson.

There was no evidence establishing that Respondent reported this land asset to the Department so it could be considered in determining eligibility for the relevant time period. BEM 400, January 1, 2012, p.6 states that "an asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset." Under the policy's definition, the property at issue was available because Respondent has had the legal right to use or dispose of the asset. There was no evidence that sufficient verification(s) was provided to the Department to establish that any of the listed policy exceptions apply, such as a joint owner being unwilling to sell, the property being non-salable, or this property being Respondent's homestead. See BEM 400 pp. 7-46. The policy does not allow for an exception in Respondent's circumstance, a need to retain ownership of the property to potentially collect on a restitution order that is almost [REDACTED] years old with no judicial order to collect payment.

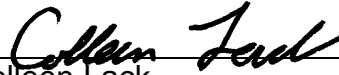
This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The evidence of record shows that the Respondent erred when he failed to accurately report all of his assets, including the property at issue. The OI period is February 1, 2012, through January 31, 2014. When the FAP eligibility was re-determined considering this property, Respondent exceeded the applicable asset limit of \$5,000.00. Thus, the difference between the benefit amounts the Respondent received and the benefit amounts the Respondent was entitled to receive was \$ [REDACTED].

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish a FAP benefit OI to Respondent totaling \$ [REDACTED].

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

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



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **6/30/2015**

CL/jaf

NOTICE OF APPEAL: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

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:

