

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

IN THE MATTER OF:



Reg. No.: 15-013939
Issue No.: 3006
Case No.: [REDACTED]
Hearing Date: September 16, 2015
County: Mecosta

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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; and Mich Admin Code, R 792.11002. After due notice, a three-way telephone hearing was held on September 16, 2015 from Lansing, Michigan. Claimant personally appeared and provided testimony. [REDACTED] (Recoupment Specialist) and [REDACTED] (Assistance Payments Specialist/Hearing Coordinator) represented the Department of Health and Human Services (Department).

ISSUE

Did the Department properly determine that Claimant 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. Claimant applied for FAP benefits on February 11, 2015. (Department's Exhibit 1, pp. 4-27)
2. On March 12, 2015, the Department mailed Claimant a Notice of Case Action (DHS-1605) which approved FAP for a group of 5 at \$ [REDACTED] per month for February 12, 2015 through February 28, 2015 and \$ [REDACTED] per month for March 1, 2015 through January 31, 2015. The notice provides that Claimant must notify the Department within 10 days of any change in circumstances affecting her eligibility for assistance. (Department's Exhibit 1, pp 28-31)
3. Claimant was employed as a home health care aide for a home care staffing agency on an "on-call" basis. (Department's Exhibit 1, p. 20)

4. The Department recorded Claimant's income as \$0 because she had not been called into work.
5. On April 21, 2015, Claimant sent a note to her caseworker which indicated that she had returned to work during the month of April (although not yet on a full-time basis). (Claimant's Exhibit 1)
6. Claimant received a paycheck on April 10, 2015. (Department's Exhibit 1, p. 33)
7. On June 26, 2015, Claimant completed a Verification of Employment (DHS-38) which indicated that Claimant returned to work and received a paycheck on May 22, 2015. (Department's Exhibit 1, pp. 34-36)
8. The Department determined that Claimant failed to report her employment within 10 days of her first paycheck and that she received an overissuance of \$ [REDACTED] during the month of June, 2015. (Department's Exhibit 1, p. 39)
9. On July 6, 2015, the Department mailed Claimant a Notice of Overissuance (DHS-4358-A) which indicated that she received a \$ [REDACTED] FAP overissuance for the month of June, 2015 due to a client error. The Department further found that Claimant was issued \$ [REDACTED] but that she was only entitled to \$ [REDACTED] during the period. (Department's Exhibit 1, p. 40-41)
10. On July 16, 2015, Claimant filed a request for hearing to dispute the Department's determination that the overissuance was due to a client error.

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. BAM 700 (May 2014), p. 1. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 715 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

An agency error is caused by incorrect actions (including delayed or no action) by the Department staff or department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between department divisions such as services staff.
- Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.).

If unable to identify the type record it as an agency error. BAM 705 (7-1-2014), p. 1.

Here, the Department alleges that Claimant received an overissuance of FAP benefits after she failed to report that she returned to work and received income within 10 days. The Department claims that Claimant's failure to report timely resulted in a FAP overissuance that affected the month of June, 2015. According to the Department, Claimant was required to report her income on April 21, 2015, but that she did not report her income until May 22, 2015. Claimant, on the other hand, contends that she timely and properly reported her income to the Department on April 21, 2015. Specifically, Claimant asserts that she submitted a letter which informed the Department that she had picked up some shifts in April and that the Department failed to properly budget this income. Claimant did not challenge the Department's assertion that she received an overissuance nor did she argue that the Department's calculations were incorrect.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The Department conceded that it received Claimant's April 21, 2015 letter but argued that the letter was vague and did not clearly indicate that she received earned income. (See Claimant's Exhibit 1) This Administrative Law Judge had reviewed Claimant's April 21, 2015 letter and finds that the letter should have placed the Department notice that Claimant had returned to work and had earned income. The Department, upon receipt of the letter, should have asked questions about her income during April. Although Claimant missed the 10 day reporting deadline by 1 day, she did notify the Department that she had a change in circumstances. The Department did not recognize this until May 22, 2015 when it received the verification of employment. However, by that time it was too late to reduce Claimant's June, 2015 benefits. The

Department's failure to act on (or at the very least inquire about) Claimant's April 21, 2015 letter led to the overissuance. Therefore, this Administrative Law Judge finds that the overissuance was due to an agency error.

In support of its calculation of the FAP overissuance, the Department presented FAP overissuance budgets for June 2015 showing the benefits Claimant was eligible to receive if her employment income had been included in the calculation of her FAP eligibility and allotment during that month. Department policy provides that regardless whether it a client or agency overissuance, when a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (May 2014), p. 1. A review of the FAP overissuance budget shows that the Department recorded \$ [REDACTED] for unreported income minus the standard deduction of \$ [REDACTED] which resulted in a total income of \$ [REDACTED] (Exhibit 1, p. 37) The Department's calculation of Claimant's proper monthly FAP benefit amount of \$ [REDACTED] was not challenged by Claimant. (Exhibit 1, p. 39). Claimant, during the month of June, 2015, received a monthly FAP amount of \$ [REDACTED]. Accordingly, the Department properly calculated that Claimant received a FAP overissuance for June, 2015 in the amount of \$ [REDACTED].

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 did make the correct determination to establish a debt. The Department has established that Claimant received a FAP overissuance in the amount of \$ [REDACTED] during the month of June, 2015 due to an agency error.

DECISION AND ORDER

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

The Department may initiate collection procedures in accordance with Department policy.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Human Services

Date Signed: 9/18/2015

Date Mailed: 9/18/2015

CAP/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 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 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:



