



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

MIKE ZIMMER  
DIRECTOR

[REDACTED]

Date Mailed: March 3, 2016  
MAHS Docket No.: 15-008430  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Robert J. Chavez**

### **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 September 24, 2015, from Detroit, Michigan. The Department was represented by [REDACTED], Recoupment Specialist.

The Respondent appeared pro se.

### **ISSUE**

Did Respondent receive an 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. On May 12, 2015, Respondent was sent a Notice of Overissuance, showing an alleged debt owing to the Department as a result of a client error during the time period of April 1, 2014 through July 31, 2014.
2. Respondent was alleged to have been overissued [REDACTED] in FAP benefits.
3. The Department alleged client error as a result of Respondent establishing residency in another state.

4. No evidence of residency was submitted.
5. On May 26, 2015, the Department requested a hearing to establish the debt.

### **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.

In this case, the Department has failed to provide to sufficient documentation to establish a debt. As such, the Department has failed to meet their burden of proof in establish a debt owed by the Respondent. The undersigned cannot hold that any overissuance occurred.

Client error can only occur when a Respondent fails to report required information and as a result, receives more benefits than they are entitled to receive. BAM 700.

However, there is no evidence that Respondent had a requirement to report a change, is liable for recoupment, or was overissued benefits as a result of a loss of residency status. In the current case, the Department has only provided a benefit transaction history (Exhibit 8) to prove Respondent's loss of residency. However, the undersigned does not believe this exhibit meets the evidence standard required to find an overissuance in this matter.

With regard to the benefit transaction history, the undersigned feels that this exhibit only shows where benefits were used. It has no bearing as to where Respondent established residency, and cannot be used to show residency. As such, the undersigned disregards this exhibit for the purposes of showing residency. Furthermore, the Department has conceded that Respondent did not apply for a driver's license, register to vote, obtain motor vehicle registrations or take any action one would normally take to establish residency in another location.

While it is true that Respondent used their benefits in another states for several months, there is no evidence that Respondent actually lived in the state in question, specifically during the time period alleged, such as a driver's license, leases, or other signs of

permanent residency. The Department has provided no other evidence that Respondent actually resided in the states in question during the time period alleged.

Contrary to popular belief, BEM 220, Residency, does not set any particular standard as to when a person is legally residing in another state, nor does it state that the simple act of using food benefits in another state counts as residing in that other state. BEM 220 does not give a maximum time limit that a Respondent may leave the state and lose residency in the State of Michigan. The simple act of leaving the state—even for an extended length of time—does not in any way remove a benefit's residency status for the purposes of the FAP program.

Because there is not enough supporting evidence to show that Respondent was actually living in another state during the time period in question, the undersigned cannot hold that they were, and as such, must decide that they lawfully received FAP benefits and there is no overissuance in the current case.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it alleged Respondent had a client error overissuance of [REDACTED] in FAP benefits.

### **DECISION AND ORDER**

Accordingly, the Department's decision 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. Remove the overissuance in question from the Respondent's case file, and cease any recoupment action in the above matter.

RC/tm



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**Robert J. Chavez**

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]