

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-013169
Issue No.: 3006
Agency Case No.: [REDACTED]
Hearing Date: September 02, 2015
County: Livingston

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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 telephone hearing was held on September 2, 2015, from Lansing, Michigan. Participants on behalf of the Claimant included the Claimant, [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included Recoupment Specialist, [REDACTED].

ISSUE

Did the Department properly determine that the Claimant received an overissuance (OI) of the Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

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 August 30, 2012, the Claimant submitted an Assistance Application for FAP.
2. Sometime between the Claimant's submission of her August 30, 2012, Assistance Application and July 1, 2013, the Claimant was no longer receiving FAP.
3. On May 28, 2013, custody of the Claimant's children was awarded to her ex-husband.
4. On August 1, 2013, the Claimant was again a recipient of FAP benefits.

PROCEDURAL HISTORY

In this case, the Recoupment Specialist requested in the hearing summary that this recoupment hearing be combined with an Intentional Program Violation hearing request, which had been submitted to the Michigan Administrative Hearing System (MAHS). It was explained to the Recoupment Specialist that these two differing hearings involve different burdens of proof and that at an IPV hearing she would be required to prove the Department's case by a clear and convincing standard. The Recoupment Specialist withdrew her request to combine the hearings and ask that the Administrative Law Judge proceed only on the recoupment issue.

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.

Additionally, when the Claimant receives an overissuance of benefits, the Department is required to recoup/collect that overissuance, regardless of fault. Bridges Administrative Manual 700 (2014) p. 1.

In this case, the Claimant testified that she did not fail to report that her ex-husband had custody of the children. The Claimant testified that, at that time, she was not a recipient of FAP benefits. Indeed, she did not apply for FAP until June or July 2013 and did not receive benefits until August 2013. The Department issuance summary supports the Claimant's testimony and shows that her initial allotment was issued August 1, 2013. The Department's OI period begins July 1, 2013 and therefore, the OI period and amount in evidence are not correct.

The Claimant testified that she regained custody of her children right around the time that she applied for FAP in the summer of 2013. The Claimant testified that she did not bring custody papers with her to the hearing. During the hearing, this Administrative Law Judge checked with the MAHS scheduling department and the Claimant is to be scheduled for an IPV hearing. It was suggested to the Claimant during the hearing that she bring her custody papers with her to the IPV hearing when it occurs. This Administrative Law Judge did ask the Recoupment Specialist if the Claimant's file had

been checked for custody papers, as household composition is oftentimes verified. The Recoupment Specialist indicated she did not have access to the Claimant's entire file.

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 took action to recoup the Claimant's 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. Redetermine the Claimant's eligibility for FAP back to August 1, 2013, and
2. Determine whether or not the Claimant received an OI, the OI period and the amount of the OI, and
3. Issue the Claimant a detail notice of the Department's determinations, and
4. Issue the Claimant any supplement she may thereafter be due.



Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **9/3/2015**

SEH/jaf

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:

