

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-014275
Issue No.: 3006
Case No.: [REDACTED]
Hearing Date: September 24, 2015
County: WAYNE-DISTRICT 49

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Upon the request for a hearing by the Department of Health and Human Services (Department or MDHHS), 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 three-way telephone hearing was held on September 24, 2015, from Detroit, Michigan. The Department was represented by [REDACTED]e, Recoupment Specialist. Participants on behalf of Respondent included Respondent, [REDACTED].

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. Respondent was a recipient of FAP benefits from the Department. See Exhibit A, pp. 6-7.
2. On [REDACTED] 5, the Department sent Respondent a Notice of Overissuance (OI notice) informing her of a FAP overissuance (OI) for the period of [REDACTED] to [REDACTED], due to client error. See Exhibit B, pp. 1-5. The OI notice also indicated that the OI balance was \$7,966.00. See Exhibit B, p. 1.
3. On [REDACTED], Respondent filed a hearing request, protesting the Department's action. See Exhibit A, p. 69.
4. On [REDACTED], MDHHS requested a debt collection hearing.

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 they are entitled to receive, the Department must attempt to recoup the overissuance (OI). BAM 700 (May 2014), p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715 (July 2014), p. 6.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

In this case, the Department alleges that Respondent failed to report that one of her children's father lived in the home (mandatory group member) and that the father had employment and wages to the Department, which caused an overissuance of FAP benefits.

First, the Department provided the father's LexisNexis report, to show that the father's address was the same as the Respondent's during the alleged OI period. See Exhibit A, pp. 2-4.

Second, the Department presented the OI budgets for the timeframe of July 2014 to May 2015. See Exhibit A, pp. 8-30. The Department also presented verification of the father's employment earnings, which did report a different address for the father. See Exhibit A, pp. 31-38.

Third, the Department provided Respondent's application dated [REDACTED] and her redetermination dated [REDACTED], which was submitted during the alleged OI period. See Exhibit A, pp. 39-61. The Department argued that Respondent failed to report the father was a member of the household and that he also had employment earnings. See Exhibit A, pp. 39-67.

Fourth, the Department provided an e-mail from a Regulation Agent of the Office of Inspector General (OIG) dated [REDACTED], in which the OIG agent stated that the

father allegedly lived with the Respondent after he was evicted from his apartment in May 2014. See Exhibit A, p. 68.

At the hearing, Respondent argued that the father never resided in her home during the alleged OI period. However, Respondent testified that the father did temporarily stay to take care of her due to medical reasons from mid-April 2015 to mid-May 2015 when their child was born. On or around [REDACTED], Respondent testified that the father was evicted and/or left his apartment and went to live with his mother thereafter. Respondent testified that the father only visited her home to spend time with the children.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2014), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 9.

Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 9. These include, but are not limited to, changes in persons in the home. See BAM 105, p. 9.

Additionally, BEM 212 outlines the process in which the Department will help determine who must be included in the FAP group prior to evaluating the non financial and financial eligibility of everyone in the group. BEM 212 (July 2014), p. 1. FAP group composition is established by determining all of the following:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately.
4. Whether the person(s) resides in an eligible living situation.

BEM 212, p. 1.

Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1.

Based on the foregoing information and evidence, the Department has failed to satisfy its burden of showing that Respondent did receive a FAP OI in the amount of \$7,966 for the period of [REDACTED]. See Exhibit A, p. 4. The Department failed to provide sufficient evidence to show that the father resided in the Respondent's home during the alleged fraud period (i.e., energy bill), other than a LexisNexis report/e-mail from an OIG agent. See Exhibit A, pp. 2-4 and 68. However, this evidence fails to show by a preponderance of evidence that the father resided in the home with the Respondent during the alleged OI period. In fact, the Department presented the father's employment earnings, which reported a different address as compared to the Respondent's. See Exhibit A, p. 31.

It should be noted that Respondent did mention that the father resided in the home temporarily from on or around mid-April 2015 to mid-May 2015. Respondent testified that the father took care of her due to medical reasons after she gave birth to their second child in common on [REDACTED]. Thus, possibly the father would have been a mandatory group member during this time period. See BEM 212, pp. 9-10 (member add and live-in attendant policy). However, the undersigned reviewed the budgets for April 2015 to May 2015 and found insufficient evidence to show that the budgets were properly calculated. See Exhibit A, pp. 9-12. For example, the group size remained six for almost the entire alleged OI period; however, with the addition of the child, it would have increased to seven. Thus, the undersigned was confused as to what the proper group size would have been for this time period.

Nevertheless, the Department has failed to establish that the father was a mandatory group member of the household. See BEM 212, p. 1. Thus, the Department does not consider his income when determining the group's eligibility. See BEM 212, pp. 1 and 7 and BEM 550 (February 2014), p. 2 (the income of a non-group member is excluded). The Department cannot seek recoupment of Respondent's FAP benefits and the Department is ordered to delete and cease any recoupment action. See BAM 700, p. 1; BAM 715 p. 6; and BAM 725 (July 2014), pp. 1-17 (collection actions).

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did not** establish a FAP benefit OI to Respondent totaling \$7,966.00 for the period of [REDACTED].

Accordingly, the Department is REVERSED.

The Department is **ORDERED** to delete the OI and cease any recoupment/collection action.



Eric Feldman
Administrative Law Judge
For Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/25/2015**

Date Mailed: **9/25/2015**

EF / hw

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:

