



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 26, 2016
MAHS Docket No.: 15-016827
Agency No.: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 May 23, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Recoupment Specialist. Respondent appeared and testified. Her daughter [REDACTED] served as a witness and translator ([REDACTED]).

ISSUE

Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits due to Department error?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In August 2014, Respondent's application for FAP benefits was approved.
2. Respondent received FAP benefits for a household of four: herself, her husband, and two children.
3. At the time of application, Respondent's household verified their immigration status to the Department by presenting I-94 Departure Records showing they were paroled until September 19, 2008 on humanitarian grounds (Exhibit F) and an Order of the Immigration Judge entered December 8, 2008 granting the family's

application for withholding of removal to Iraq under 241(b)(3) of the INA (Immigration and Naturalization Act) (Exhibit H).

4. On September 2014, each of Respondent's household members received a permanent residency card showing Iraq as the country of birth, a category F47 or F48, and residency since September 28, 2014 (Exhibit G).
5. On July 16, 2015, Respondent submitted the permanent residency cards to the Department in connection with a FAP redetermination.
6. The Department alleges that Respondent and her household were not eligible for FAP based on their immigration status and that it improperly approved Respondent for FAP benefits.
7. The Department alleges Respondent received a FAP OI totaling \$5102 during the period August 1, 2014 through July 31, 2015, due to the Department's error.
8. On August 24, 2015, the Department sent Respondent a Notice of Overissuance notifying her of the \$5102 FAP overissuance.
9. On September 9, 2015, the Department received Respondent's request for hearing disputing the overissuance.

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.

The Department alleges that it erroneously approved Respondent's August 2014 application for FAP benefits and issued benefits to her from August 1, 2014 through July 31, 2015 that her household was not eligible to receive because of the group's immigration status.

To receive FAP benefits, a person must be a U.S. citizen or have an acceptable alien status, and individuals who do not meet this requirement are disqualified from FAP eligibility. BEM 225 (July 2014 and October 2014), p. 1. Clients who enter the U.S. as

aliens whose deportation (removal) is being withheld under INA Section 241(b)(3) or 243(h) are eligible for FAP for the first seven years following the date of the withholding order. BEM 225, p. 7. If they adjust to another category which requires them to meet the five-year requirement, they are still eligible for the first seven years. BEM 225, p. 7.

In this case, Respondent and her family were granted parolee status when they first entered the U.S. in March 2008 (Exhibit F). In the December 8, 2008 Order of the Immigration Judge (Exhibit H), the judge granted Respondent's household's application for withholding of removal to Iraq under § 241(b)(b). Therefore, as parolees whose deportation was withheld under § 241(b)(3), Respondent, her husband, and their two children were eligible for FAP for seven years from the date of the Order, or, in this case, until December 2015. Although their immigration statuses changed to permanent residents upon their receipt of the I-551 permanent residency cards (commonly referred to as "green cards"), they continued under BEM 225 to remain eligible for FAP as parolees whose deportation was withheld until December 2015. See also 8 USC § 1612(2)(a)(iii). Therefore, the Department erred when it concluded that Respondent was ineligible for FAP benefits during the period August 1, 2014 to July 31, 2015. Because Respondent was eligible for FAP benefits during this period, there was no FAP OI.

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 \$5102 for the period August 1, 2014 to July 31, 2015.

DECISION AND ORDER

Accordingly, the Department is REVERSED.

The Department is ORDERED to cease collection and/or recoupment procedures from Respondent and her household for a \$5102 FAP OI for the period August 1, 2014 to July 31, 2015.



ACE/tlf

Alice C. Elkin
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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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