



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 24, 2016
MAHS Docket No.: 16-002011
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

Following Respondent's request for a hearing, 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 conference hearing was held on March 23, 2016, from Lansing, Michigan. Respondent appeared and represented herself. [REDACTED] (Recoupment Specialist) represented the Department of Health and Human Services (Department). [REDACTED] (Eligibility Specialist/Hearing Facilitator) was also present, but did not offer any testimony.

ISSUE

Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits totaling \$ [REDACTED] for the period of September 1, 2013 to February 29, 2016 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. During all relevant times, Respondent received FAP benefits issued by the Department.
2. Respondent and [REDACTED] (Respondent's husband) were legally married at all times.
3. Respondent resided at [REDACTED] at all times. The subject property was being purchased on a land contract.

4. On or about August 7, 2013, Respondent reported to the Department that her husband was no longer residing in the home. [Exh. 1, p. 14].
5. On September 10, 2013, Respondent applied for Medical Assistance (MA) benefits and indicated that she was the only household member and that her housing bill consisted of a \$ [REDACTED] monthly land contract expenses. [Exh. 1, pp. 167-181].
6. On or about September 18, 2013, Respondent applied for State Emergency Relief (SER) for assistance with property taxes. [Exh. 1, p. 156].
7. On September 21, 2013, Respondent conducted a telephone interview with a departmental caseworker where she indicated the owner and payer of taxes on the subject property was her husband. Respondent was not listed as a joint-owner of the subject property. During the interview, Respondent denied that her husband lived in the home and refused to provide any information about him. The Department was unable to assist Respondent with her SER application because she was not listed as a joint owner of the subject property. [Exh. 1, p. 156].
8. On February 24, 2014, Respondent sent the Department a redetermination (DHS-1010), which indicated that, for the period of April 14, 2014 through March 31, 2016, Respondent lived alone and that her husband was not living with her. [Exh. 1, pp. 153-154].
9. In February, 2015, Respondent sent the Department a Mid-Certification Contact Notice (DHS-2240-A0 form which listed only Respondent as being in the home. [Exh. 1, p. 155].
10. The Department conducted a Quality Control (QC) audit concerning Respondent's FAP case for the month of September, 2015. During the audit, the Department had a collateral contact with [REDACTED] (the land contract holder), who indicated that Respondent's husband has always lived with Respondent in their home and had been employed at [REDACTED], since 2011. [Exh. 1, pp. 145-146].
11. Respondent's husband confirmed that he has always been living in the home located at [REDACTED]. Respondent's husband also confirmed his employment at [REDACTED], since 2011. [Exh. 1, p. 146].
12. During the QC audit, the Department also determined that Respondent was not truthful about her monthly land contract payment amount. The QC audit concluded that Respondent stated that her land contract payment was \$ [REDACTED] per month (and provided a receipt dated February 1, 2014 reflecting the amount), but that the land contract holder stated that the monthly payment has always been \$ [REDACTED]. According to the land contract holder, Respondent's husband pays the monthly payment. [Exh. 1, p. 146].

13. On January 22, 2016, the Department's Office of Quality Assurance & Internal Control prepared a Final FAP Case Review Results Summary and Narrative and recommended that Respondent's husband be added to the FAP case along with his earned income and that shelter expenses be reviewed to assure accurate FAP issuance and determine if recoupment is necessary. [Exh. 1, p. 146].
14. On January 27, 2016, the Department mailed Respondent a Notice of Overissuance (DHS-4358-A) which notified her that: (1) Respondent received an overissuance of FAP benefits during the period of September 1, 2013 through February 29, 2016; (2) the total overissuance amount is \$ [REDACTED] and (3) the reason for the overissuance is due to client error (CE) based on Respondent's spouse being added to the group composition and shelter expense decrease. [Exh. 1, p. 8].
15. The Department alleges that Respondent received FAP benefits in the amount of \$ [REDACTED] during the period of September, 2013 through February 29, 2016, but that the correct FAP amount was \$ [REDACTED] during this period. According to the Department, Respondent received a FAP overissuance in the total amount of \$ [REDACTED] [Exh. 1, p. 14].
16. On February 23, 2016, Respondent requested a hearing to dispute the overissuance amount. [Exh. 1, p. 2].

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.

For all programs, when a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (1-1-2016). BAM 700 explains overissuance types and standards of promptness (SOP). An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an overissuance is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. Recoupment is a MDHHS action to identify and recover a benefit overissuance. BAM 700, pp. 1-2.

There are three different types of overissuances for all programs. An agency error, a client error and a CDC provider error. BAM 700, pp. 4-7. A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p. 6. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, and any of the following occurred: (a) the hearing request is later withdrawn; (2) MAHS denies the hearing request; (3) the client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed; (4) the hearing decision upholds the department's actions. BAM 700 p. 6.

BAM 715 (1-1-2016) explains client error overissuance processing and establishment. Overissuances discovered by the Office of Quality Assurance (OQA) must be referred to the Recoupment Specialist (RS) within seven days of receipt of the OQA findings since they verified one exists. BAM 715, p. 2. No client overissuance will be established if the amount is less than \$250. BAM 175, p. 6.

In the instant matter, the Department contends that Respondent received an overissuance of FAP benefits during the period at issue due to a client error. Specifically, the Department alleges the QC audit showed that Respondent and her husband were group members, but that she reported that her husband was no longer residing in her home. As a result, the Department was not aware Respondent's husband lived in her home, the Department failed to budget his earned income from employment and the shelter expense was not properly budgeted. Respondent, on the other hand, insists that she and her husband did not live together during the alleged overissuance period. She challenged the QC audit findings and stated that the land contract holder had never been to the house.

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 first inquiry is whether Respondent and her husband lived together during the overissuance period. "Living with" means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share only an access area such as an entrance or hallway or non-living area such as a laundry room are not considered living together. BEM 212 (10-1-2015), p. 3. The Administrative Law Judge finds that the QC audit report to be persuasive; particularly the results of the collateral contact with the loan contract holder. There was no evidence that the loan contract

holder was being deceitful or untruthful when he informed the Department that Respondent and her husband both live together and that Respondent's husband worked at [REDACTED], since 2011. It is highly unlikely that this specific information was simply fabricated. In addition, the record also shows that Respondent's husband corroborated this same information in his own words. [See Exh. 1, p. 146].

Respondent's responses to the Administrative Law Judge's questions during the hearing, at times, were evasive and often vague. Respondent's testimony that her husband and mother-in-law "voided" the initial land contract behind her back as an explanation for why she pays for a land contract that is not in her name does not make sense. In addition, Respondent, at no time, provided any specific information about her husband other than to say that he wants to be left alone. This Administrative Law Judge finds that Respondent and her husband were living together in the same common living quarters. Respondent's testimony that her husband lived with "one of his relations" is not credible. Respondent failed to properly report to the Department her actual FAP group composition and that her husband was a member of her FAP group during the overissuance period.

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. The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First, determine if they **must** be included in the group. Spouses who are legally married and live together **must** be in the same group. BEM 212, p. 1. [Emphasis added].

Because this Administrative Law Judge had already found that Respondent and her husband lived together during the overissuance period, Respondent's husband is a mandatory group member and must be included in her FAP group. BEM 212, p. 1.

Petitioner's contention that she paid \$ [REDACTED] per month for her land contract housing expenses is not credible. The record shows that Petitioner's land contract holder stated that the monthly payment has always been \$ [REDACTED] [Exh. 1, pp. 146]. Respondent explains that she paid a \$ [REDACTED] overpayment during one month. However, this Administrative Law Judge finds that Petitioner's explanation is not credible. There is no reason to believe the land contract holder would fabricate this. The Department had every reason to believe that Petitioner's regularly monthly land contract expense was \$ [REDACTED] when it completed the budget for the FAP case.

The record in this matter shows that Respondent received \$ [REDACTED] in FAP benefits during the overissuance period. The budgets during this time period, which were included in the record, reveal that only Respondent's unearned income was budgeted when her monthly FAP allotment was determined. [Exh. 1, pp. 17-128]. However, the verifications in the record showed Respondent's husband, who was a mandatory group member, was duly employed during the overissuance period, but was not considered in

Respondent's FAP budget. [Exh. 1, pp. 130-144]. The Department should have included the earned income from Petitioner's husband in the FAP budget. Because Respondent did not properly identify the household's group composition and income, this resulted in the FAP overissuance. The resulting FAP overissuance is due to client error. See BAM 700, p. 6.

In support of the FAP OI for the months from September 1, 2013 to February 29, 2016, the Department presented FAP OI budgets for each month showing the amount of benefits Respondent was eligible to receive if her husband's income for the month had been considered in calculating her FAP benefit amount. The monthly FAP amount Respondent was eligible to receive was substantially less than the amount she actually received during the overissuance period. A review of the budgets shows that the Department properly considered Respondent's husband's actual income for each month in accordance with policy. BAM 715, p. 8.

The material, competent and substantial evidence on the whole record shows that the Department did establish that Respondent received an overissuance of FAP benefits. 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 acted in accordance with Department policy when it determined Respondent received an overissuance of FAP benefits and the Department is entitled to recoup this overissuance pursuant to BAM 725.

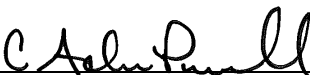
DECISION AND ORDER

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

THEREFORE, IT IS ORDERED THAT:

- Respondent received an overissuance of FAP benefits in the amount of \$ [REDACTED] for the period of September 1, 2013 to February 29, 2016.
- The overissuance was due to a client error.
- The Department may initiate collection procedures for a \$ [REDACTED] FAP overissuance in accordance with Department policy.

CP/las



C. Adam Purnell
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]

Petitioner

[REDACTED]