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

IN THE MATTER OF:

████

Reg. No: 2008-15899
Issue No: 3020, 3052

████

Grand Traverse County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to 7 CFR 273.18; 45 CFR 233.20(a)(13); MCL 400.9; MCL 400.37; MCL 400.43(a); MAC R 400.941 and MCL 24.201, *et seq.*, upon a hearing request by the Department of Human Services (department) to establish an overissuance of benefits to Respondent. After due notice was mailed to Respondent, a hearing was held on July 14, 2011, at which Respondent personally appeared and provided testimony.

ISSUE

Whether Respondent received an overissuance of Food Assistance Program (FAP) benefits that the department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1.   Respondent was receiving FAP benefits at all times pertinent to this hearing.

2.   On December 11, 2006, Respondent reported to the department that he had begun working as a truck driver on December 1, 2006. (Hearing Summary & Department Exhibit 3).

3.   On April 19, 2007, Respondents employer verified that Respondent began working on October 31, 2006 and received his first paycheck on November 10, 2006. (Department Exhibit 4).

4.   The Department budgeted Respondent's earned income from employment beginning in January 2007. (Department Exhibit 10).

5.   The department failed to budget Respondent's correct income earnings from employment in February, 2007 and March 2007, which resulted in an overissuance of FAP benefits in the amount of ███████. (Department Exhibits 11-17). The OI in January 2007 was due to client error ███████), but the OI in February and March of 2007 was due to agency error (███████ (Department Exhibits 11-17).

6.   On February 28, 2008, the Department mailed Respondent a Notice of Overissuance (DHS-4358-A). (Department Exhibits 18-19).

7.   Respondent submitted a hearing request on March 1, 2008 protesting the debt establishment. (Request for a Hearing).

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR).   The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM 700. The department error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. Some examples are:

-      Available information was not used or was used incorrectly

-      Policy was misapplied

-      Action by local or central office staff was delayed

-      Computer or machine errors occurred

-      Information was not shared between department divisions (services staff, Work First agencies, etc.)

-      Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.)

Where the type of OI cannot be identified, the department shall record it as a department error. BAM 700. For FIP, SDA, CDC and FAP, department error OIs are not pursued if the estimated OI amount is less than ██████per program. BAM 700. Except there is no threshold limit on CDC system errors. BAM 700. (For FIP, SDA and FAP only, the department error threshold was lowered to ██████ retroactive back to August 1, 2008. BAM 700.

A client error OI 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. A client error also exists when the client's timely request for a hearing results in deletion of a DHS action, and

- The hearing request is later withdrawn, or

- SOAHR denies the hearing request, or

- The client or administrative hearing representative fails to appear for the hearing and SOAHR gives DHS written instructions to proceed, or

- The hearing decision upholds the department's actions. See BAM 600. BAM Item 700, p. 5.

For FIP, SDS, CDC and FAP only, department error OIs are not pursued if the estimated OI amount is less than ▇▇▇ per program. Client error OIs are not established if the OI amount is less than ▇▇▇, unless:

- the client or provider is active for the OI program, or

- the OI is a result of a Quality Control (QC) audit finding. BAM 700, p. 7.

There are few exceptions for circumstances where department error occurs. For FIP, SDA, CDC and FAP only department error OIs are not pursued if the estimated OI amount is less than ▇▇▇ per program. BAM 700. But there is no threshold limit on CDC system errors. BAM 700. The Reconciliation and Recoupment Section (RRS) in the department's central office will recoup these types of overissuances. BAM 700. The department error threshold was lowered to ▇▇▇ retroactive back to August 1, 2008. BAM 700. For the FIP and SDA programs only, the department treats an OI due to excess assets as a department error unless IPV caused it. BAM 700.

As to the FAP program only, the department will not recoup OIs caused by the following department errors:

- The group was certified in the wrong county.
- The local office failed to have the FAP group sign the application form. BAM 705, pp. 1-2.

For FIP, SDA, CDC and FAP only, the OI period begins with the first month (or first period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the discovery date, whichever is later. BAM 705.

To determine the first month of the OI period for changes reported timely and not acted on, allow time for:

. the full Standard of Promptness (SOP) for change processing, per BAM 220, and

. the full negative action suspense period. See BAM 220, EFFECTIVE DATE OF CHANGE.

The OI period ends the month (or payment period for CDC) before the month when the benefit is corrected. BAM 705. For FIP, SDA, CDC and FAP only, the OI discovery date for a department error is the date the RS can determine there is a department error. BAM, Item 705, pp. 4-5.

For FAP only, the amount of EBT benefits received in the OI calculation is the gross (before Automated Recoupment (AR) deductions) amount issued for the benefit month. BAM 705. If the FAP budgetable income included FIP/SDA benefits, the department will use the grant amount actually received in the OI month. BAM 705. The department will use the FIP benefit amount when FIP closed due to a penalty for non-cooperation with employment-related activity or child support. BAM 705, p. 6.

For purposes of FIP, SDA, CDC and FAP only, if improper budgeting of income caused the OI, use actual income for the past OI month for that income source. BAM 705. The income received weekly or every other week is converted to a monthly amount. BAM 705. Except for FAP only, income is not converted from a wage match for any type of OI. BAM 705. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 705.

For FAP only, if the FAP budgetable income included FIP/SDA benefits, the department will use the grant amount actually received in the OI month. BAM 705. The department will use the FIP benefit amount when FIP closed due to a penalty for non-cooperation in an employment-related activity. BAM, Item 705, p. 6.

In this case, the department is requesting recoupment for an alleged FAP overissuance in the amount of ████ for the period of January 1, 2007 through March 30, 2007. Initially, it was the respondent who failed to timely report that he had a new job as a truck driver within the standard of promptness. On December 11, 2006, Respondent reported that he began to work on December 1, 2006. In reality, Respondent actually began working on October 31, 2006 and received his first paycheck on November 10, 2006. During the hearing, Respondent admitted that this was a client error as he should have reported his new job within 10 (ten) days of the start date. Due to client error in failing to report his income, this resulted in an OI of ██ in FAP benefits. However, after the department verified Respondent's proper income and dates, it failed to properly budget his income for February and March, 2006. Due to an agency error in failing to budget Respondent's income from employment from February, 2007 through March, 2007, a FAP OI resulted in the amount of ██. The total OI amount is ████.

Department policy indicates that when a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. BAM 700. In this case, the error was both a client error and a department error. Both client and Department error

OIs are recouped if the amount is more than ███. BAM 700. The total OI in this case (███████) must be recouped by the department.

This Administrative Law Judge finds that the evidence presented by the department shows that Respondent is responsible for repayment of the overissuance from January 1, 2007 through March 30, 2007.

<u>DECISION AND ORDER</u>

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Respondent received an overissuance of FAP benefits for the time period of January 2007 through March 2008, that the department is entitled to recoup.

The department is therefore entitled to recoup FAP overissuance of ████████ from Respondent.

It is SO ORDERED.

___/s/_____
C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 7/19/11

Date Mailed: 7/19/11

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.
The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CAP/ds