IN THE MATTER OF:

Reg. No: 200823947
Issue No: 3020, 3052

July 6, 2011
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the DHS client's (referred to as "the claimant") request for a hearing received on June 12, 2008. After due notice, a telephone hearing was held on July 6, 2011. 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 6, 2011, at which Respondent did not appear. This matter having been initiated by the department and due notice having been provided to the Respondent, the hearing was held in Respondent's absence in accordance with Bridges Administrative Manual, Item 725.

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. Respondent signed Assistance Application (DHS-1171) on May 4, 2007, acknowledging that she understood her failure to give timely, truthful, complete and accurate information about her circumstances could result in a civil or criminal action or an administrative claim against her. (Department Exhibit 1). In this application, Respondent indicated that she was employed at ███████████████ and took home ██████ per month in wages. (Department Exhibit 1).

3.   On May 31, 2007, the Department discovered that Respondent had a second job at Alternative Services where she took home ████████ in monthly wages. (Department Exhibit 2)

4.   The Department budgeted Respondent's earnings from Alternative Services beginning in March 2008. (Department Exhibit 3).

5.   On April 30, 2008, the Department received a Verification of Employment (DHS-38) from Alternative Services which indicated that Respondent's employment began on October 15, 2006. (Department Exhibit 3).

6.   The department failed to budget earnings from Alternative Services from June, 2007 to February 2008 which resulted in an overissuance of FAP benefits in the amount of ████████. (Department Exhibits 4-6). The OI was due to agency error. (Department Exhibits 4-6).

7.   On May 27, 2008, the Department mailed Respondent a Notice of Overissuance (DHS-4358-A). (Department Exhibit 7).

8.   Respondent submitted a hearing request on June 12, 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).

Department policy states:

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). This item explains OI types and standard of promptness. BAM, Item 700, p. 1.

OVERISSUANCE TYPES

Department Error

2

All Programs

A 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.)

If unable to identify the type of OI, record it as a department error.

FIP, SDA, CDC, and FAP

Department error OIs are not pursued if the estimated OI amount is less than $125 per program.

*Exception***:** There is no threshold limit on CDC **system** errors. RRS in central office will recoup these types of overissuances.

FIP, SDA and FAP Only

Note: The department error threshold was lowered to $125 retroactive back to August 1, 2008.
FIP and SDA Only

Treat an OI due to excess assets as a department error **unless** IPV caused it.

CDC Only

CDC department errors and CDC provider department errors must be pursued beginning October 1, 2006. If the CDC department error OI period included the month of October 2006, include the months previous to October 2006 when determining the OI amount.

Note: Department errors will be assigned to the provider or the client depending on the type of department error that occurred. See PAM 705 for examples.

MA, SER and ESS Only

Recoupment of department error OIs are not pursued. BAM 700, pp. 3-4.

Client Error

All Programs

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.

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.

SDA Only

A client error exists when the client fails to honor an SDA repay agreement after receiving a potential resource. Do not pursue IPV. See BEM 272. BAM 700, p. 5.

OVERISSUANCE THRESHOLD

FIP, SDS, CDC and FAP Only

Department error OIs are not pursued if the estimated OI amount is less than $125 per program.

Client error OIs are not established if the OI amount is less than $125, 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.

DEPARTMENT ERROR EXCEPTIONS

FIP, SDA, CDC and FAP Only

Department error OIs are not pursued if the estimated OI amount is less than $125 per program.

***Exception*:** There is no threshold limit on CDC **system** errors. The Reconciliation and Recoupment Section (RRS) in central office will recoup these types of overissuances.

The department error threshold was lowered to $125 retroactive back to August 1, 2008.

FIP and SDA Only

Treat an OI due to excess assets as a department error **unless** IPV caused it.

FAP Only

Do 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.

MA, SER and ESS Only

Recoupment of department error OIs is not pursued. BAM 705, p. 2.

OVERISSUANCE PERIOD

FIP, SDA, CDC and FAP Only

OI Begin Date

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.

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.

OI End Date

The OI period ends the month (or payment period for CDC) before the month when the benefit is corrected.

OI Discovery Date

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.

OVERISSUANCE CALCULATION

FIP, SDA, CDC and FAP Only

Benefits Received

FIP and SDA Only

The amount of benefits received in an OI calculation includes:

- regular warrants
- supplemental warrants
- duplicate warrants
- vendor payments
- administrative recoupment deductions
- EBT cash issuances
- EFT payments
- replacement warrants (use for the month of the original warrant)

Do not include:
- warrants that have not been cashed
- escheated EBT cash benefits (SDA only)

BAM, Item 705, p. 5.

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.

FAP participation is obtained on CIMS on the IATP screen.

If the FAP budgetable income included FIP/SDA benefits, use the grant amount actually received in the OI month. 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.

Determining Budgetable Income

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.

Convert income received weekly or every other week to a monthly amount.

Exception: For FAP only, income is not converted from a wage match for any type of OI.

Any income properly budgeted in the issuance budget remains the same in that month's corrected budget.

FAP Only

If the FAP budgetable income included FIP/SDA benefits, use the grant amount actually received in the OI month. 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 June 1, 2007 through February 30, 2008. At the time Respondent applied for FAP benefits in May 2007, she reported her income from Gross Adult Foster Care. The Department, on May 31, 2007, became aware that Respondent also had income from Alternative Services, but did not properly budget this income. Due to agency error in failing to budget Respondent's income from Alternative Services from June, 2007 through February 30, 2008, a FAP OI resulted in the amount of ▮▮▮▮▮.

Department policy indicates that when a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance. BAM 700. In

this case, the error was a department error, as the appropriate action was not taken timely by the department staff. Department error overissuances are recouped if the amount is more than ██. BAM 700. The overissuance in this case is ████, so it 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 June 1, 2007 through February 30, 2008.

<p align="center">DECISION AND ORDER</p>

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 June 2007 through February 2008, that the department is entitled to recoup.

The department is therefore entitled to recoup FIP 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:__7/12/11_____

Date Mailed:__7/12/11_____

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