

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

IN THE MATTER OF:



Reg. No.: 2014-7793
Issue No(s): 3008
Case No.: [REDACTED]
Hearing Date: November 26, 2013
County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on November 26, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant, and [REDACTED] mother. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] Recoupment Specialist. The record was left open for the Department to forward the Claimant's payroll documentation, which was received November 26, 2013.

ISSUE

Did Claimant receive an overissuance of program benefits 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. Claimant received benefits for:

- Family Independence Program (FIP). State Disability Assistance (SDA).
 Food Assistance Program (FAP). Child Development and Care (CDC).

2. The Department determined that Claimant received a
 FIP FAP SDA CDC overissuance in the amount of \$ [REDACTED] during the period of June 1, 2012, through November 30, 2012.

3. The overissuance was due to Department error.

4. On August 23, 2013, the Department sent notice of the overissuance and a repayment agreement to the Claimant.
5. On October 18, 2013, Claimant filed a hearing request, protesting the Department's recoupment action.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

Additionally, when a client group receives more benefits than it is entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM 700. An agency error OI is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) or the Department of Information and Technology staff or department processes. Also, when unable to identify the type of OI, it is to be recorded as an agency error. For FAP, client and agency error OI's are pursued if the estimated OI amount is more than \$ [REDACTED] BAM 700 and BAM 705. However, the agency error threshold was \$ [REDACTED] from August 1, 2008 through November 30, 2012. BAM 705. The amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700 and 705. If improper budgeting of income caused the OI, use actual income for the past OI month for that income source. BAM 705.

The Department asserted that the Claimant received an OI of FAP in the amount of \$ [REDACTED] for the period of June 1, 2012, through November 30, 2012. The OI was caused by earnings from the Claimant's employment not being reported and therefore not included in the FAP budget. However, the Department has entered the OI as an agency error because the application covering the OI timeframe could not be located. The Department and Client Error Information and Repayment Agreement indicated that if the entire balance of the OI was not paid by September 4, 2013, the Department would begin administrative recoupment by decreasing the Claimant's ongoing FAP allotment by \$ [REDACTED] effective October 1, 2013. (Exhibit A, page 4)

The Department utilized a payroll summary from the employer to calculate the amount of the OI. This payroll summary contained many columns, including: net amount, total pay and total cost. The Department utilized the figures in the total cost column as the Claimant's gross earnings. (Exhibit A, page 24)

The Claimant testified that his boss reported sending in the employment verification when it was requested. The Claimant indicated he had not been aware that the Department never received the employment verification when it was originally requested. Further, the Claimant asserted there is a difference in his wages during the OI period based on the payroll documentation he obtained from the employer. (Exhibit 1, pages 1-2) The gross earnings column on this version of the payroll documentation documents less in gross earnings than what the Department utilized in calculating the OI. (Exhibit 1, pages 1-2; Exhibit A, page 24)

The Recoupment Specialist reviewed the payroll documentation the Claimant submitted for the hearing and noted the gross earnings column on it matches the total pay column on the documentation the Department had when the OI amount was calculated. (Exhibit A, page 24; Exhibit 1, pages 1-2) Accordingly, the Recoupment Specialist testified that she may need to verify what the correct gross income was and recalculate the amount of the OI.

It appears that the Department may have erred in basing the OI calculation on the figures in the total cost column on the payroll summary. (Exhibit A, page 24) This figure may include other costs to the employer in addition to the Claimant's wages. Rather, it appears that the figures in the total pay column on the payroll documentation the Department had represent the Claimant's gross earnings. (Exhibit 1, pages 1-2; Exhibit A, page 24) Accordingly, the Department has not established that the OI amount was correctly calculated in this case.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, the Administrative Law Judge concludes that Claimant did not receive the overissuance for which the Department presently seeks recoupment.

DECISION AND ORDER

Accordingly, the Department's action seeking recoupment is: **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Recalculate the Claimant's monthly FAP allotment retroactive to October 1, 2013 without the proposed administrative recoupment of \$ [REDACTED] in accordance with Department policy.

2. Issue the Claimant any supplement that he may thereafter be due.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 2, 2013

Date Mailed: December 2, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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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 48909-07322

CL/las

cc:

