

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201327457
Issue No.: 4060
Case No.: [REDACTED]
Hearing Date: February 28, 2013
County: Genesee 06

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; MCL 400.43 (a); Mich Admin Code, R 400.941 and MCL 24.201, et seq., upon a hearing request by the Department of Human Services (Department) to establish an overissuance (OI) of benefits to Respondent. After due notice, a hearing was held on February 28, 2013. Respondent appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Recoupment Specialist).

ISSUE

Did Respondent receive an OI of Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. Respondent was a recipient of FAP during the period September 1, 2011 through December 1, 2011.
2. Respondent received a FAP OI during the period of September 1, 2011 through December 1, 2011, due to Respondent's error.
3. \$ [REDACTED] of the OI is still due and owing to the Department.

CONCLUSIONS OF LAW

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

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM 700. An overissuance (OI) is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. BAM 700. For FAP benefits, an OI is also defined as the amount of benefits trafficked (traded or sold). BAM 700.

OIs are caused by either Department error or by a client error. BAM 700. For all programs, a Department error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700. Some examples of OIs that occur due to department error are: (1) the Department failed to use correct information or incorrectly used available information; (2) the Department misapplied policy; (3) the Department, through its local office or staff member, delayed taking some action; (4) there was a computer or machine error; (5) information was not shared between Department divisions and (6) data exchange reports were not acted upon timely. BAM 700.

When the type of OI is unable to be identified, it shall be recorded 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 \$125 per program. BAM 700. However, there is no threshold limit on CDC system errors. BAM 700. For FIP, SDA and FAP, the Department error threshold was lowered to \$125 retroactive back to August 1, 2008. BAM 700. For the FIP and SDA programs only, the Department will consider an OI due to excess assets as a Department error unless it was the result of an intentional program violation (IPV). BAM 700.

For 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. BAM 700. A client error also exists when the client's timely request for a hearing results in deletion of a DHS action, and (1) the hearing request is later withdrawn, or (2) administrative hearings denies the hearing request, or (3) the client or administrative hearing representative fails to appear for the hearing and administrative hearings gives DHS written instructions to proceed, or (4) the hearing decision upholds the Department's actions. See BAM 600 and BAM 700.

For FAP only, the Department will not recoup OIs caused by the following Department errors: (1) the group was certified in the wrong county or (2) the local office failed to have the FAP group sign the application form. BAM 705.

For FIP, SDA, CDC and FAP, the OI period begins with the first month (or first period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 (twelve) months before the discovery date, whichever is later. BAM 700.

To determine the first month of the OI period for changes reported timely and not acted on, the Department will allow time for the full Standard of Promptness (SOP) for change processing, per BAM 220, and the full negative action suspense period. BAM 700. See also BAM 220. The OI period ends the month (or payment period for CDC) before the month when the benefit is corrected. BAM 700. For FIP, SDA, CDC and FAP, 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 FIP, SDA, CDC and FAP, 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) BAM 700.

But does not include:

- . warrants that have not been cashed
- . escheated EBT cash benefits (SDA only)

BAM, Item 705, p. 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 700. If the FAP budgetable income included FIP/SDA benefits, the Department will use the grant amount actually received in the OI month. BAM 700. 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.

When determining budgetable income for FIP, SDA, CDC and FAP, the following policies apply. If improper budgeting of income caused the OI, the Department will use actual income for the past OI month for that income source. BAM 700. Income received weekly or every other week will be converted to a monthly amount. BAM 700. Except for FAP only, income is not converted from a wage match for any type of OI. BAM 700. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 700.

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.

Here, the evidence shows that Respondent received an OI of FAP benefits. During the hearing, Respondent did not challenge the fact that an OI occurred. However, Respondent argued that the OI was due to Department error rather than a client error. Respondent's exhibits consisted of copies of fax reports that were sent to the Department. These documents did not clearly establish that Respondent faxed the Department proof that he had been working since July, 2011. But even if the documents proved that the error was due to the Department rather than Respondent, the Department has sufficiently established the OI in this matter. The Department is authorized to recoup the OI.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department properly determined that Respondent received a \$ [REDACTED] OI of FIP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did make the correct determination to establish a debt.

Accordingly, the Department is **AFFIRMED** for the reasons stated above.

The Department is ORDERED to initiate collection procedures in accordance with Department policy.

IT IS SO ORDERED.

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

Date Signed: March 4, 2013

Date Mailed: March 5, 2013

NOTICE: The law provides that within 60 days from the mailing date of the above hearing Decision the Respondent may appeal it to the circuit court for the county in which he/she resides or has his or her principal place of business in this state, or in the circuit court for Ingham County. Administrative Hearings, on its own motion, or on

request of a party within 60 days of the mailing date of this Hearing Decision, may order a rehearing.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CAP/cr

cc:

