

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-41857
Issue No(s): 3006
Case No.: [REDACTED]
Hearing Date: January 15, 2014
County: Muskegon

ADMINISTRATIVE LAW JUDGE: DARRYL T. JOHNSON

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 January 15, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED], and her husband, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Assistance Payments Supervisor [REDACTED] and Recoupment Specialist [REDACTED].

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 benefits from the Department.
2. The Department alleges Respondent received a FAP OI during the periods September 2008 through December 2008, and May 2010 through July 2010 due to Claimant error.
3. The Department alleges that Respondent received the following OI that is still due and owing to the Department:
 - a. FAP:
 - i. September 2008 \$ [REDACTED]
 - ii. October 2008 \$ [REDACTED]
 - iii. November 2008 \$ [REDACTED]
 - iv. December 2008 \$ [REDACTED]
 - v. Total \$ [REDACTED]

b. FAP:

i. May 2010	\$	[REDACTED]
ii. June 2010	\$	[REDACTED]
iii. July 2010	\$	[REDACTED]
iv. Total 2010	\$	[REDACTED]

4. The Claimant submitted a hearing request on April 17, 2013 to challenge the Department's finding that there were periods of OI.

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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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.

Policies and procedures for calculating, establishing and recouping an OI are contained in the following manual items:

- BAM 705, Agency Error Overissuances.
- BAM 710, MA and AMP Overissuances.
- BAM 715, Client Error Overissuances.
- BAM 720, Intentional Program Violation.
- BAM 725, Collection Actions.
- BEM 232, Direct Support Services.
- ERM 401, Payment.

FIP, SDA, CDC, MA and FAP, DHS requests hearings for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. BAM 725, p. 16.

The Recoupment Specialist (RS) is expected to represent DHS unless the local office designates someone else. The hearing proceeds without the client present if the DHS-828 is **not** returned by the post office as undeliverable. BAM 725, p. 22.

For all programs, when a client group receives more benefits than it is entitled to receive; DHS must attempt to recoup the over issuance (OI). BAM 700, p. 1 (7-1-13). An OI is the amount of benefits issued to the client group (or CDC provider) in excess of what it was eligible to receive. BAM 700, p. 1. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). "Recoupment" is a DHS action to identify and recover a benefit OI. BAM 700, p. 1.

There are three types of OIs: (1) agency error; (2) client error; and (3) CDC provider error. BAM 700, pp. 4-7.

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, p. 6. A client error also exists when the client's timely request for a hearing results in deletion of a DHS action, and any of the following occurred: (1) 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 DHS written instructions to proceed; or (4) the hearing decision upholds the department's actions. (See BAM 600.) BAM 700, p. 6.

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700, pp. 4-6. If the Department is unable to identify the type of OI, it is recorded as an agency error. BAM 700, p. 4.

For FIP, SDA, CDC and FAP, agency error OIs are not pursued if the estimated OI amount is less than \$250 per program. BAM 700, pp. 4-5. For FIP, SDA and FAP only, the agency error threshold was raised to \$250 from \$125 with an effective date of December 1, 2012. BAM 700, pp. 4-5. The agency error threshold was lowered to \$125 from \$500 with a retroactive effective date of August 1, 2008, until November 30, 2012. BAM 700, pp. 4-5.

For FIP, SDA, CDC and FAP, the amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705, p. 6.

Liability for OI: For all programs, repayment of an overissuance is the responsibility of: (1) anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred; and (2) a FAP-authorized representative if they had any part in creating the FAP overissuance. BAM 725, p. 1.

Collection of OI: The Department's computer system, known as "Bridges," will collect from all adults who were a member of the case. Administrative recoupment may be deducted on more than one case for a single overissuance. BAM 725, p. 1.

Active programs: All cases that contain an adult member from the original overissuance group and are active for the program in which the overissuance occurred are liable for the overissuance and subject to administrative recoupment. BAM 725, p. 3.

Inactive programs: Overissuances on inactive programs are recouped through cash repayment processes. BAM 725, p. 3.

ALJ Decision: If the department is **upheld** at the hearing, [the department worker] must change all affected overissuances on ARS by entering the hearing decision date for the establishment date. If the department is **reversed** at the hearing, [the department worker] must implement the hearing decision by deleting or reducing the overissuance balance for each affected overissuance. BAM 725, p. 22.

On June 8, 2008, the Claimant applied for FAP and reported her earned income. A December 3, 2008 Verification of Employment for her spouse was received reflecting her spouse's earned income. In a November 23, 2009 Semi-Annual Contact Report & Redetermination Claimant and her spouse both reported earned income. Similarly, on June 2, 2010 the Department found in a Redetermination that Claimant and her spouse were earning income from work.

The reported OI amounts for 2008 are found in Exhibit 1, Pages 55-62. The reported OI amounts for 2010 are found in Exhibit 1, Pages 65-71. The Department concluded that the group's income exceeded the simplified reporting (SR) limit for a group of three.

The policy in effect in September 2008 regarding simplified reporting is found in BAM 200 issued August 1, 2008. On page 4 the policy states,

"The only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. Groups report if their actual income for a month exceeds 130% of poverty level. QC uses the actual income when determining whether a client should have reported. See BAM 715.

"Example: The group's income for September exceeded the SR income limit. The group should have reported this by October 10th. The decrease would have been effective in November. November is the first month of the overissuance."

"To determine the group's SR income limit, all eligible members of the FAP group are counted." BAM 200, page 1. The Claimant's group size in September 2008 was three. RFT 250 (July 1, 2008) gives a SR gross income limit of \$ [REDACTED] for that group size. See column E of RFT 250.

That policy was carried over in the May 1, 2010 update to BAM 200.

Claimant testified that, due to some domestic problems, Child Protective Services told her that she and her husband could not live together. They separated from September 2008 until May 2009, and she lived alone during that time although their son was regularly in the home with her throughout the separation. The SR limits during that time were \$ [REDACTED] for a group of one, \$ [REDACTED] for a group of two, and \$ [REDACTED] for a group of three. The SR income limit effective for May 2010 was published in RFT 250 dated October 1, 2009. The limit for a group of one was \$ [REDACTED] and for a group of three was \$ [REDACTED]

Claimant worked for [REDACTED] [REDACTED] and her spouse worked for [REDACTED] [REDACTED] & [REDACTED] [REDACTED]. Her income records are found at pages 39-42 and his income records are found at pages 45-53 of Exhibit 1. Their respective incomes for the pertinent time period are:

Claimant		Spouse	Combined
September 2008	██████████	██████████	██████████
October 2008	██████████	██████████	██████████
November 2008	██████████	██████████	██████████
December 2008	██████████	██████████	██████████
May 2010	██████████	██████████	██████████
June 2010	██████████	██████████	██████████
July 2010	██████████	██████████	██████████

Note: Claimant's income for July 2010 included three bi-weekly pay periods. Her gross income for each pay period was: July 3 - \$██████████ July 17 - \$██████████ July 31 - \$██████████ The Department based its computations on the income for the July 3 and July 17 pay checks. See Exhibit 1, page 67.

The testimony is clear that Claimant's income was below the SR limit throughout the relevant time in 2008. Whether her income was considered alone for a group of one, or her income was combined with her husband's for a group of three, it never exceeded the SR limit. There was no OI during 2008.

The facts tell a different story, however, for the relevant time in 2010. There was no testimony to suggest that the parties were apart during 2010, so the correct group size was three. Claimant should have reported her increased income from May 2010 by June 2010, and the OI would have first occurred in July 2010. The evidence establishes that Claimant's group income for May, June, and July 2010 exceeded the SR limit. Because the policy in effect sets a two-month delay in finding an overissuance, the Department erred in finding an OI for May and June 2010. There was an OI in July 2010. (It will be noted that, because the spouse's income alone was close to the limit in July 2010, the Claimant's income from each pay period put the group over the SR limit.) Claimant received FAP in July 2010 of \$██████████ and the correct benefit should have been \$0.00 See Exhibit 1, page 66.

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 that Claimant received an OI of \$██████████ in July 2010. The Department did not act in accordance with Department policy when it determined that Claimant received an OI in the months of September, October, November, and December of 2008, and May and June of 2010.

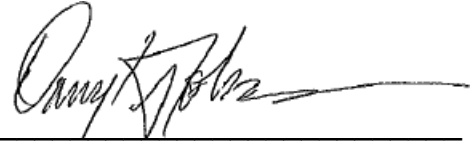
DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the finding of an \$██████████ over-issuance in July 2010, and **REVERSED IN PART** with respect to the findings of over-issuances in September, October, November, and December of 2008, and May and June of 2010.

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. Initiate collection procedures for a \$ [REDACTED] OI in accordance with Department policy.



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 17, 2014

Date Mailed: January 17, 2014

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

DTJ/las

cc:

