

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001972
Issue No.: 3006
Case No.: [REDACTED]
Hearing Date: September 22, 2014
County: OAKLAND-3

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

HEARING DECISION

Upon a hearing request by the Department of Human Services (Department) to establish an over issuance (OI) of benefits to Respondent, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 400.43a, and 24.201, *et seq.*, and Mich Admin Code, R 400.941, and in accordance with 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 September 22, 2014, from Detroit, Michigan. Participants on behalf of the Department included [REDACTED], Recoupment Specialist.

Participants on behalf of Respondent included the Respondent.

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 period April 1, 2012, through March 31, 2014, due to Department's error.
3. The Department alleges that Respondent received a [REDACTED] OI that is still due and owing to the Department.

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Additionally, in this case, the Recoupment Specialist did a superior job in unwinding a history of serious errors by the Department. This recoupment action involves several agency errors. The first error started at the time of the application when the Respondent applied online on September 14, 2011. At that time, the Respondent reported her earned income, which was never included by the Department when calculating the Respondent's food assistance benefits and this error continued until March 2014, even though the Respondent continued to report her income. In addition, the Department committed another serious error when it entered the wrong person in the Bridges System for Respondent's daughter. The Respondent reported her daughter with the correct name, birthdate and Social Security number; however, the Department entered a different individual with the same name as Respondent's daughter with the same birthday and different Social Security number. This error initially caused the Respondent's daughter to be not included in the food assistance group because the person who was entered as her daughter was active in another group.

The FAP over issuance budgets covering a 24-month period were individually reviewed at the hearing. The budgets had to be reviewed for Group composition, group size correctness and earned income as well as spousal support income amounts. With regard to group size, the issue was whether the Department correctly included or excluded the Respondent's daughter and granddaughter as group members. The Department also provided detailed information regarding the earned income that the Department failed to include based upon Respondent's employer earning information received. Exhibit 1p. 72 – 79 (employment earnings).

Several of the budgets were deemed incorrect and are outlined below. For the period May 2012 through August 2012, it was determined that Respondent's daughter, [REDACTED], should have been included in the group and was not. The Respondent's daughter, [REDACTED], graduated from high school in May of 2012, and then attended community college full-time in September, 2012. A review of the over issuance budgets for [REDACTED] are deemed incorrect as they are based on the group size of one when in fact the Respondent's daughter was an eligible Group member at the time. Thus, the overissued

amounts for these months which total [REDACTED] must be removed from the over issuance total, for a new over issuance total of \$ [REDACTED]. At the hearing, the undersigned referred to the wrong column when calculating the over issuance for this time period on the record. The over issuance was stated on the record as being [REDACTED] deducted from the total over issuance, but the correct amount was instead [REDACTED] Exhibit 1 page 10 and 11.

The Department incorrectly added the correct [REDACTED] to the food assistance group in September 2012. At the time, Respondent's daughter was working and her income and work hours made her an eligible student for the months of September 2012 in October 2012. In calculating the over issuance, the Department removed [REDACTED] from the food assistance group beginning November 2012, because she was no longer working and, therefore, no longer an eligible student based on the evidence which showed her wages did not demonstrate 20 hours per week of work. The policy regarding student status and Eligibility provides:

FAP Only

A person is in student status if he is: age 18 through 49 and enrolled half-time or more in a regular curriculum at a college or university that offers degree programs regardless of whether the diploma is required. In order for a person in student status to be eligible, they must meet one of the following criteria: employed for at least 20 hours per week and paid for such employment. BEM 245 (10/1/11) p. 2-3.

Based upon Department policy, the Department properly determined that [REDACTED] was not an eligible student.

The remainder of the budgets which were reviewed also noted that the Department incorrectly calculated budgets for several months due to its failure to include the Respondent's granddaughter in the FAP group. The evidence presented indicated that the Department removed the Respondent's granddaughter from the food assistance group in May 2013. At the hearing, however, the Department could not substantiate why she was removed. The Respondent credibly testified that her granddaughter was with her for a year. In addition, her testimony was not rebutted by the Department. The over issuance budgets for this period beginning May 2013 show a group size of one, and include only the Respondent's unearned income from spousal support and do not include the Respondent's granddaughter's unearned income or the granddaughter as a group member. Exhibit 1, p. 46. Based upon the evidence presented, it is determined that the Respondent's testimony that her granddaughter was with her for one year is reliable and credible. The Respondent credibly testified that she had custody of her granddaughter which resulted from the granddaughter's mother, the Respondent's daughter, being [REDACTED]. The evidence presented show that the granddaughter was added and reported by a redetermination dated August 9, 2012. Exhibit 1, p.123-126. Therefore, it is determined that the over issuance budgets for the period [REDACTED]

[REDACTED] and [REDACTED]), are not correct and the over issuance amounts must be removed from the over issuance total. Exhibit 1p. 46-54. The total which must be deducted for this is [REDACTED] from the total over issuance amount. [REDACTED]

The budgets presented in evidence that are deemed correct cover the months beginning [REDACTED] Exhibit 1 p. 30-37. The corresponding over issuance amounts for those months are the following amounts [REDACTED] respectively.

For the period beginning January 2014, the over issuance budgets as presented that are correct and cover the months of January 2014, February 2014 and March 2014. Exhibit 1 p. 56-67. These budgets included the correct earned income from the Respondent's employment and spousal support income which are verified. The group size of one person is also correct, as the Respondent's granddaughter was no longer living with her and the Respondent's daughter was an ineligible student attending school full-time. The corresponding over issuance for those months are the following [REDACTED], respectively.

Lastly, it must be noted that the Agency's errors were numerous and egregious; however, based on Department policy, the Department is required to seek recoupment for food assistance benefits improperly received even in instances of agency error.

An **agency error** is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) staff or department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Agency error OIs (other than CDC **system** errors) are not pursued if the OI amount is under \$125 per program. BAM 705 (12/1/11) p. 1 and 2.

BAM 700 provides: When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over issuance (OI). BAM 700 (12/1/11) p.1.

In this case, the over issuance amount exceeds [REDACTED]; thus, the Department was required to proceed with debt collection.

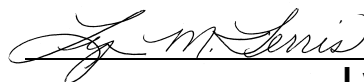
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish a FAP benefit OI to Respondent totaling [REDACTED], but is not entitled to the original over issuance amount sought in the amount of [REDACTED] for the reasons explained in the Conclusions of Law.

DECISION AND ORDER

Accordingly, the Department is

AFFIRMED IN PART, with respect to the fact that the Respondent received an over issuance of FAP benefits, and REVERSED IN PART, with respect to the original over issuance amount sought which was more than the amount originally sought.

The Department is ORDERED to initiate collection procedures for a [REDACTED] OI in accordance with Department policy.



Lynn Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 10/13/2014
Date Mailed: 10/13/2014

LMF/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

