

3. As a result of the repayment agreement, Claimant would be disqualified from receiving FAP benefits for the time period of November 1, 2010, to October 31, 2011 (one-year disqualification). See Exhibit 1, pp. 4, 12, and 22.
4. On or around November 13, 2014, the Department alleged that Claimant continued to receive FAP benefits during the disqualification period (November 1, 2010 to October 31, 2011) in which she was not eligible to receive FAP benefits due the previous IPV disqualification. See Exhibit 1, p. 4.
5. On November 13, 2014, the Department sent Claimant a Notice of Overissuance, which notified Claimant that she received more FAP benefits than she was eligible to receive for the time period of July 1, 2011 to October 31, 2011. See Exhibit 1, p. 5. The Notice of Overissuance further indicated the overissuance balance was \$4,008 based on agency error and due to the IPV from November 1, 2010 to October 31, 2011 (signed repayment agreement prior). See Exhibit 1, p. 5.
6. On November 13, 2014, the Department sent Claimant a second Notice of Overissuance, which notified Claimant that she received more FAP benefits than she was eligible to receive for the time period of November 1, 2010 to November 30, 2010. The Notice of Overissuance further indicated the overissuance balance was \$955 based on agency error and due to the IPV from November 1, 2010 to October 31, 2011.
7. On November 24, 2014, Claimant filed a hearing request, protesting both Notices of Overissuance and the reduction in her FAP benefits. See Exhibit 1, pp. 2-3 and Exhibit 2, p. 1-2.
8. On December 10, 2014, the Michigan Administrative Hearing System (MAHS) sent both parties a Notice of Hearing, which scheduled a hearing on December 22, 2014.
9. On December 22, 2014, both parties attended the scheduled hearing.
10. On December 23, 2014, this Administrative Law Judge (ALJ) sent both parties an Order Granting Continuance.
11. On January 6, 2015, the MAHS sent both parties a Notice of Continuance Hearing, which scheduled the continuance hearing on January 21, 2015.
12. On January 21, 2015, Claimant failed to attend her continuance hearing.

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 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.

Preliminary Matter

On November 13, 2014, the Department sent Claimant a Notice of Overissuance. See Exhibit 1, p. 5. On November 13, 2014, the Department sent Claimant a second Notice of Overissuance. On November 13, 2014, the Department also sent Claimant a Notice of Case Action notifying her that her FAP benefits would be reduced to \$1,176 effective December 1, 2014, due to a change in her shelter deduction amount. See Exhibit 2, pp. 3-6.

On November 24, 2014, Claimant filed a hearing request, protesting both Notices of Overissuance and the reduction in her FAP benefits. See Exhibit 1, pp. 2-3 and Exhibit 2, pp. 1-2.

On December 10, 2014, the MAHS sent both parties a Notice of Hearing, which scheduled a hearing on December 22, 2014. On December 22, 2014, both parties attended the scheduled hearing. On December 22, 2014, both the Department and Claimant were able to present their arguments/positions as it related to the Notices of Overissuance. However, the administrative hearing had to be continued in order to address Claimant's dispute with her reduction in FAP benefits. See Exhibit 2, pp. 1-2. On December 23, 2014, this ALJ sent both parties an Order Granting Continuance. On January 6, 2015, MAHS sent both parties a Notice of Continuance Hearing, which scheduled the continuance hearing on January 21, 2015.

Prior to the scheduled hearing on January 21, 2015, Claimant contacted the MAHS office indicating she would possibly be late for the hearing. The MAHS notified the Claimant to contact the MAHS office if she was unable to appear for the hearing within the scheduled time for a possible telephone hearing. Claimant failed to contact the MAHS office within the scheduled time of her hearing. MAHS also contacted the DHS office to inquire if Claimant appeared for the hearing within the scheduled time, but she did not. As such, it is found that Claimant's hearing request disputing her FAP decrease dated November 24, 2014, is DISMISSED for failure to appear. See BAM 600 (October 2014), p. 34. This decision will only address if Claimant received a FAP overissuance.

FAP Overissuance

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 705 (July 2014), p. 6.

An agency error is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) staff or department processes. BAM 705, p. 1. 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 errors occurred.
- Information was not shared between department divisions such as services staff.
- Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.).

BAM 705, p. 1. If unable to identify the type record it as an agency error. BAM 705, p. 1.

The Department indicates that the time period it is considering the overissuance (OI) period is November 1, 2010 to November 30, 2010 and July 1, 2011 to October 31, 2011.

In the present case, Claimant is an ongoing recipient of FAP benefits. See Exhibit 2, pp. 3-6. On July 26, 2010, Claimant signed a repayment agreement regarding her FAP benefits. See Exhibit 1, p. 22. As a result of the repayment agreement, Claimant would be disqualified from receiving FAP benefits for the time period of November 1, 2010 to October 31, 2011 (one-year disqualification). See Exhibit 1, pp. 4, 12, and 22. On or around November 13, 2014, the Department alleged that Claimant continued to receive FAP benefits during the disqualification period (November 1, 2010 to October 31, 2011) in which she was not eligible to receive FAP benefits due the previous IPV disqualification. See Exhibit 1, p. 4. As such, on November 13, 2014, the Department sent Claimant two Notices of Overissuance in which it sought the recoupment amounts. See Exhibit 1, pp. 5-9.

At the hearing, Claimant disputed the OI amounts because she testified that she was actually disqualified from receiving FAP benefits for the time period of November 1, 2010 to October 31, 2011. In fact, Claimant testified that the Department recouped from her FAP benefits during the disqualification period of November 1, 2010 to October 31, 2011.

In response, the Department acknowledged several miscalculations and/or errors with the alleged OI amount.

First, the Department miscalculated the alleged OI amount. During the alleged OI period, Claimant had additional group members who were eligible to receive FAP benefits. The evidence indicated only the Claimant was disqualified from receiving FAP benefits during the disqualification period. However, the Department currently seeks the total amount of FAP benefits issued for the entire FAP group. For example, the Department indicated the alleged OI amount for July 2011 is \$986. See Exhibit 1, p. 8. The FAP issuance for \$986 would have reflected a group size of approximately seven group members. See Exhibit 1, p. 13. This would be an improper OI calculation as the other FAP group members were eligible to receive benefits. The Department failed to present any evidence that the other group members were not eligible to receive FAP benefits. Instead, the Department should have calculated a lower OI amount in which it would have only reflected a FAP OI for the Claimant.

Second, the evidence appeared to indicate that Claimant was actually disqualified from receiving FAP benefits during the disqualification period. For example, the Department presented Claimant's FAP – Eligibility Determination Group (EDG) Summary (EDG summary) for the benefit period of July 2011. See Exhibit 1, p. 13. A review of Claimant's EDG summary indicated that Claimant was not part of the certified group and that she was a disqualified adult. See Exhibit 1, p. 13. This would appear to indicate that the Department properly applied the IPV disqualification and that she did not receive any benefits from November 1, 2010 to October 31, 2011. In fact, Claimant testified that she was disqualified from receiving benefits for the time period. As such, the EDG summary presents confusion as to why the Department currently seeks an OI amount if Claimant did properly serve her disqualification period.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600, p. 34. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 35. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 37.


Based on the above information, including the Department acknowledging several miscalculations and/or errors with the alleged OI amount, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish an OI of FAP benefits. See BAM 600, pp. 34-35 and 37.

DECISION AND ORDER

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 for the time period of July 1, 2011 to October 31, 2011 (in the amount of \$4,008) and for the time period of November 1, 2010 to November 30, 2010 (in the amount of \$955).

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

IT IS ALSO ORDERED that Claimant's hearing request disputing her FAP decrease dated November 24, 2014, is **DISMISSED** for failure to appear.


Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/23/2015**

Date Mailed: **1/23/2015**

EJF / cl

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.

