

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

IN THE MATTER OF:

██████████
████████████████████
████████████████████

Reg. No.: 14-008038
Issue No.: 3006
Case No.: ██████████
Hearing Date: March 23, 2015
County: WASHTENAW
(DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Upon a hearing request by the Department of Human Services (Department) to establish an overissuance (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 March 23, 2015, from Detroit, Michigan. Participants on behalf of the Department included ██████████.

Respondent did not appear. This matter having been initiated by the Department and due notice having been provided to Respondent, the hearing was held in Respondent's absence in accordance with Department of Human Services Bridges Administrative Manual (BAM) 725 (July 2014), pp. 16-17.

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 Food Assistance (FAP) OI during the period August 2012 through July 31, 2013 due to Department error.

3. The Department alleges that Respondent received a \$1412 OI that is still due and owing to the Department.
4. The Claimant correctly reported to the Department, at all time periods pertinent to the overissuance period, his drug felony convictions which were overlooked by the Department.
5. The Department requested a hearing on July 7, 2014.
6. The Claimant requested a hearing on July 2, 2014 which was timely as an earlier Notice of Hearing was sent by MAHS to the wrong address.

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.

In this case, the Department alleges that Respondent received an OI of his FAP benefits based on agency error because the Department failed to enter the two drug felony convictions reported by the Claimant on all his applications and redetermination.

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.

On June 26, 2014, the Department sent Respondent a Notice of Overissuance, which notified Respondent that he received more FAP benefits than he was eligible to receive for the time period of August 2012 through July 31, 2013. See Exhibit A, p. 33. The Notice of Overissuance further indicated the overissuance balance was \$1412 based on agency error and due to failure to disallow benefits due to drug felony convictions.

Department policy requires the following:

A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, **and**
- The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole:

- FIP benefits must be paid in the form of restricted payments.
- Receipt of FAP benefits requires an authorized representative.

2nd Offense

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996.

At the hearing, the Department presented evidence to show the Claimant's conviction record which demonstrated two convictions for controlled substance convictions which he reported to the Department which failed to notice the information, and thus an agency error is present based on the Department's failure to disqualify the Respondent from receiving FAP benefits.

First, the Department presented Respondent's August 20, 2012 application for FAP. and May 31, 2013. See Exhibit A, pp. 4 and 15. In the application, Respondent properly reported his convictions.

Based on the foregoing information and evidence, the Department did establish a FAP benefit OI to Respondent. The evidence presented that Respondent properly reported the required information which was not utilized by the Department. However, the Department can still proceed with recoupment/collection of the OI when there is an agency error present. An agency error OI is present in this case because the Department failed to disqualify the Claimant from receiving Food Assistance. See BAM 705, p. 1.

The overissuance period begins the first month (or first pay period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the RS, whichever 12 month period is later. BAM 705. P. 5

Applying the agency error overissuance period standard and in consideration that the group member last received FAP in July 2013, the Department determined that the OI period began on one year prior or August 31, 2012. See Exhibit A, pp. 36. It is found that the Department applied the appropriate OI period begin date. BAM 705, p. 5.

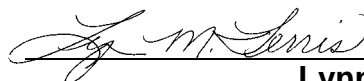
Additionally, the Department presented the benefit issuance summary which established that the Respondent did receive FAP benefits during the period which he was not entitled to receive for the period August 2012 through December 31, 2012 and January 31, June 30 and July 1, 2013. Exhibit A pp 30 – 32. Based upon the evidence presented, the Department established that Respondent's overissuance was \$1412 in FAP benefits. Thus, the Department is entitled to recoup \$1412 of FAP benefits. See BAM 715, p. 8.

DECISION AND ORDER

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 \$1412.

Accordingly, the Department is AFFIRMED.

The Department is ORDERED to initiate collection procedures for a \$1412 OI in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/25/2015**
Date Mailed: **3/25/2015**

