

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

IN THE MATTER OF:

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

Reg. No.: 15-005055
Issue No.: 1006; 3006
Case No.: ██████████
Hearing Date: May 04, 2015
County: Macomb-District 36

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on May 4, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Recoupment Specialist.

ISSUE

Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) and Family Independence Program (FIP) 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. Claimant was an ongoing recipient of FAP and FIP benefits (Exhibit A).
2. On February 12, 2015, the Department sent Claimant (i) a Notice of Overissuance notifying her that she received a FAP OI during the period August 1, 2014 to January 31, 2015, totaling \$1546 due to client error and that, if the FAP overissuance was not paid in full by February 24, 2015, the Department would recover the balance through administrative recoupment by reducing her monthly FAP benefits to \$244 effective March 1, 2015, and (ii) a Notice of Overissuance notifying her that she received a FIP OI during the period August 1, 2014 to January 31, 2015, totaling \$2371 due to client error and that, if the FIP overissuance was not paid in full by February 24, 2015, the Department would

recover the balance through administrative recoupment by reducing her monthly FIP benefits to \$2 effective March 1, 2015 (Exhibits D and E).

3. On March 23, 2015, Respondent filed a hearing request disputing the Department's actions and alleging that any error in calculating benefits was due to agency error.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (May 2014), p. 1. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 715 (July 2014), p. 6; BAM 705 (July 2014), p. 6.

In this case, the Department alleges that Claimant received more FAP and FIP benefits than she was eligible to receive from August 1, 2014 to January 31, 2015 because she failed to report her June 2014 in a timely manner and the Department did not become aware of her employment, and begin budgeting her income, until it was notified by Claimant's PATH worker in a February 3, 2015, email (Exhibit F). Clients must report changes in circumstances, including employment, that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105 (January 2015), p. 10.

In this case, the Department characterized the FAP OI as a client error. A client error overissuance occurs when the client received more benefits than entitled because the client gave incorrect or incomplete information to the Department. BAM 715, p. 1. An agency error is caused by incorrect actions (including delayed or no action) by the Department and includes information not being shared between Department divisions. BAM 705, p. 1.

The recoupment specialist acknowledges that Claimant obtained her employment through her participation in the Michigan Work First! Program and that Claimant notified her Work First! worker of the employment in June 2014 (Exhibit H). However, the Department contends that Claimant did not notify the Department of her employment and it became aware of the employment only after the Work First! worker emailed the Department worker in February 2015 and notified the worker of Claimant's employment (Exhibit F). The recoupment specialist testified that although the evidence established that Claimant notified her Work First! worker of her employment, Work First! was no longer designated as a Department division as of May 2014, and clients who reported income to Work First! but failed to report to the Department are recouped as a client error rather than an agency error. See Bridges Policy Bulletin (BPB) 2014-010, p. 1.

Claimant countered that she notified both her Work First! worker and, at the worker's instructions, her Department worker. She credibly testified that she contacted her Department worker by phone twice, leaving voice mail messages both times. Changes may be reported in person, by mail, or by telephone. BAM 105, p. 12. The recoupment specialist testified that the worker did not recall Claimant contacting him, but the worker was not present at the hearing to rebut Claimant's testimony. Furthermore, even though the Department does not treat information reported to Work First! as sufficient to fulfill a client's obligation to report changes to the Department, Claimant's credibility is bolstered by the evidence showing that she timely reported her employment to her Work First! worker and, consistent with her testimony, the Work First! worker reported the employment to the Department via the Department-accessible database. Under the evidence presented, the Department improperly characterized the alleged overissuance as a client error.

FAP OI

In support of its calculation of the FAP OI, the Department presented FAP OI budgets for each month between August 2014 through January 2015 showing the benefits Claimant was eligible to receive if her employment income had been included in the calculation of her FAP eligibility and allotment during each month at issue. Department policy provides that, for client error FAP overissuances due, at least in part, to failure to report earnings, the Department does not allow the 20% earned income deduction on the unreported earnings. BAM 715, p. 8. A review of each of the FAP OI budgets shows that the Department, based on its conclusion that the failure to budget income was due to client error, did not include the 20% earned income deduction applied in calculating a client's net income for FAP eligibility and allotment. BEM 556 (July 2013), p. 3. Because, as discussed above, the failure to budget income in this case was due

to an agency error, not a client error, Claimant was entitled to the 20% earned income deduction when the overissuance was calculated. Because none of the budgets include the earned income deduction and the overissuance for each month between August 2014 and January 2015 was dependent on the calculation of net income and was not based on excess gross income, the FAP OI budgets presented do not support the Department's FAP OI calculation. Therefore, the Department has failed to establish the FAP OI.

FIP OI

A client is eligible for FIP benefits if the client's certified group's budgetable income for the benefit month exceeds the group's payment standard by at least \$10. BEM 518 (July 2013), pp. 2-3. At application, the Department applies the issuance deficit test and compares the budgetable income using the qualifying earned income disregard for the income month to the certified group's payment standard for the application month, and the group is ineligible for FIP for the application month if no deficit exists. BEM 518, p. 3. For ongoing recipients, the Department applies the issuance deficit test and compares budgetable income for the income month using the issuance earned income disregard to the certified group's payment standard for the benefit month, and the group is ineligible for FIP for the benefit month if no deficit exists or the group has a deficit less than \$10. BEM 518, p. 3.

The payment standard is dependent on the client's FIP certified group size. BEM 515 (July 2013), p. 1. Based on a certified group size of two (Claimant and her infant child), the applicable payment standard is \$403. RFT 210 (December 2013), p. 1. To determine the amount of a FIP grant a client is eligible to receive, the client's countable income is subtracted from the client's payment standard. BEM 515, p. 1; BEM 518, p. 4.

In support of its calculation of the FIP OI, the Department presented (i) a printout from the Work Number, the Department-accessible database showing employment information voluntarily reported by employers, that showed Claimant's employment income for August 2014 through January 2015; (ii) a benefit summary inquiry showing the FIP benefits issued to Claimant between August 2014 and January 2015; and (iii) FIP OI budgets for each month between August 2014 through January 2015 showing the benefits Claimant was eligible to receive if her employment income had been included in the calculation of her FIP eligibility and allotment during each month at issue.

In this case, the FIP OI budgets show that the Department applied the 20% disregard, the standard for the qualifying earned income disregard, to each of the months at issue. See BEM 518, p. 5. However, for August 2014, the first month of the OI period, Claimant was an ongoing FIP recipient. Therefore, the Department should have applied the qualifying issuance test, with its 50% disregard, in determining the FIP benefits Claimant was eligible to receive. See BEM 518, p. 5. Because it failed to do so, the Department failed to support the August 2014 \$356 OI calculation. Application of the

issuance deficit test to the September 2014 budget shows that Claimant was ineligible for any FIP that month. Therefore, the Department has established the FIP OI for September 2014. Once Claimant was no longer eligible for FIP benefits under the issuance deficit test, the Department properly applied the qualifying deficit test, with its 20% disregard, to determine Claimant's ongoing FIP eligibility. A review of the FIP OI budgets for the remaining months shows that the Department properly calculated Claimant's earned income for each month and applied the earned income deductions under the qualifying deficit test. Because Claimant income, after application of the qualifying deficit test earned income deductions, was greater than the \$403 payment standard, Claimant was ineligible for any FIP benefits between October 2014 and January 2015. BAM 705, p. 7.

Because the Department failed to support its FIP OI for August 2014 but its evidence shows that Claimant was ineligible for any of the FIP benefits she received between September 2014 and January 2015, the correct FIP OI amount is \$2015.

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 (i) the Department failed to satisfy its burden of showing that it properly calculated the FAP OI and (ii) Claimant received a FIP OI in the amount of \$2015.

DECISION AND ORDER

The Department is ordered to (i) delete the FAP OI for August 2014 to January 2015 and cease any recoupment/debt collection proceedings related thereto and (ii) reduce the FIP OI to \$2015 for the period August 1, 2014 to January 31, 2015 and to initiate any recoupment/debt collection action procedures related thereto.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/11/2015**

Date Mailed: **5/11/2015**

ACE / tlf

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

