

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 15-000907
Issue No.: 3007
Case No.: ██████████
Hearing Date: February 18, 2015
County: WAYNE-DISTRICT 55
(HAMTRAMCK)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 February 18, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ ██████████ Hearings Facilitator; and ██████████, Eligibility Specialist.

ISSUE

Did Claimant receive an overissuance of program benefits that the Department is entitled to recoup?

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 is an ongoing recipient of Food Assistance Program (FAP).
2. On January 6, 2015, the Department sent Claimant a Notice of Case Action (case action) notifying her that the Department owed her \$941 worth of benefits for the period of March 26, 2014 to December 31, 2014. See Exhibit 1, pp. 3-4.
3. On January 6, 2015, the case action also informed Claimant that she owed an overissuance (OI) in the amount of \$2,164. See Exhibit 1, p. 4. The case action further stated that the Department subtracted the \$941 (the amount it owes her), which resulted in a total OI amount of \$1,223. See Exhibit 1, p. 4.

4. The Department determined that Claimant's daughter received the OI due to Department error for the period of December 1, 2011 to July 31, 2012 (OI period). See Exhibit 1, pp. 5-7.
5. The Department's claim detail screen indicated that the Department did not close the FAP case when the client moved out of state on April 1, 2012, which resulted in the OI period. See Exhibit 1, p. 7. The claim detail screen indicated the OI amount was \$1,600, but the outstanding balance amount was \$1,223. See Exhibit 1, p. 7.
6. Claimant alleged the following during the OI period: (i) she did not have custody of her daughter; (ii) her daughter did not reside with her but with the adoptive parents; and (iii) she was not part of her daughter's FAP group.
7. On January 15, 2014, Claimant filed a hearing request, protesting the Department's recoupment action. See Exhibit 1, p. 2.

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.

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.

In this case, the Department determined that Claimant's daughter received an OI due to Department error for the period of December 1, 2011 to July 31, 2012 (OI period). See Exhibit 1, pp. 5-7. However, Claimant and the Department were perplexed as to why recoupment was sought against the daughter's mother (Claimant in this case). An overissuance is the amount of benefits issued to the client group. BAM 700, p. 1. Moreover, policy allows the Department recoup the OI from everyone in the client group. See BAM 700, p. 1. But, Claimant argued that she was not part of her daughter's FAP group. Claimant alleged the following during the OI period: (i) she did not have custody of her daughter; (ii) her daughter did not reside with her but with the adoptive parents; and (iii) she was not part of her daughter's FAP group. During the hearing, the Department acknowledged that the daughter's group size was one during the alleged OI period. As such, it was unclear as to why the Department attempted recoupment from the daughter's mother (Claimant), if she was not associated with her daughter during the OI period.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (January 2015), p. 35. 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 foregoing information and evidence, 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.

First, the Department failed to establish its burden that it could attempt to recoup benefits from the daughter's mother (Claimant). The OI is based on the Claimant's daughter receipt of FAP benefits. See Exhibit 1, pp. 5-7. Policy allows the Department to recoup the OI from everyone in the client group. See BAM 700, p. 1. However, Claimant argued that she had no legal relation with her daughter and did not reside with her during the alleged OI period. The Department failed to rebut Claimant's argument that she was not part of the client group.

Second, the Department failed to present any evidence of how it calculated the OI amount, i.e., FAP budgets or benefit summary inquiry. Thus, the Department is unable to


establish an OI of FAP benefits in this case. See BAM 600, pp. 34-35 and 37; BAM 700, p. 1; and BAM 705, p. 6.

Third, the Department indicated that a recoupment specialist (RS) was not present for the hearing. A recoupment specialist is not mandatory to be part of the hearing. However, within 60 days of receiving the referral, the RS must determine if an overissuance actually occurred and determine the overissuance type. BAM 705, p. 4. Within 90 days of determining an overissuance occurred, the RS must obtain all evidence needed, calculate the agency error amount, etc...See BAM 705, p. 4. In this case, an RS was not present during the hearing to indicate how the Department calculated the agency error amount. See BAM 705, p. 4. Nevertheless, 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 December 1, 2011 to July 31, 2012 (in the amount of \$1,223 or \$2,164 (total amount indicated in case action dated January 6, 2015)).

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


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

Date Signed: **2/19/2015**

Date Mailed: **2/19/2015**

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.

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 48909-8139

CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]