

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

IN THE MATTER OF:

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Reg. No.: 15-004508
Issue No.: 3006
Case No.: ██████████
Hearing Date: April 23, 2015
County: MACOMB-DISTRICT 12
(MT CLEMENS)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a hearing was held on April 23, 2015, from Detroit, Michigan. The Department was represented by ██████████ ██████████ Recoupment Specialist.

Participants on behalf of Respondent included the Respondent and the Respondent's Authorized Hearing Representative (AHR), ██████████.

ISSUE

Did Respondent receive an OI of Food Assistance (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 \$3157 OI during the period April 1, 2013 through January 31, 2015, due to **Respondent's** error due to failure to report employment income.
3. A Redetermination was completed by the Respondent and received by the Department on August 1, 2014. In the redetermination the Respondent indicated

that she was working. Exhibit A p .56. The Department never verified the employment with the Respondent as part of the redetermination.

4. The Respondent Completed an online application for Medical Assistance on April 5, 2013 which did not report any employment,
5. The Department alleges that Respondent received a \$3157 OI that is still due and owing to the Department.
6. The Respondent requested a hearing on March 9, 2015.

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), and Department of Health and Human Services Reference Tables Manual (RFT).

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 to .3015.

Additionally, in this case the Department sought to recoup \$3157 in overissued FAP benefits. The proofs presented by the Department at the hearing had several problems such that the correct overissuance amount could not be determined.

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. The following paragraphs describe the problems presented by the Department's proofs.

First, the Department provided FAP budgets instead of overissuance budgets. The budgets presented precluded reviewing and comparing FAP benefits actually received and FAP benefits the Respondent was entitled to receive. Unlike an overissuance budget, the FAP budgets presented did not also break down separately the weekly or bi-weekly income utilized for the month so it could be compared for accuracy as the unreported income. Lastly, there was no overissuance summary showing the actual FAP benefits received versus the correct actual FAP Respondent should have received, to review how the total overissuance was determined.

Second, the Department incorrectly found client error for the months of September 2014 through January 31, 2015 even though the Respondent had reported on a redetermination that she was working. Exhibit A p. 56.

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 budgets for this period (September 2014 through January 31, 2015) actually contained the earned income and included a 20% disregard of earned income even though client error was alleged. However, the actual overissuance amount was not shown, only the correct benefit amount and, because the budgets were prepared as FAP budgets and were not prepared as overissuance budgets, the overissued FAP benefit amount was not shown on the budget, which is the same problem as described in the preceding paragraph.

Lastly the FAP budget for September 2013 miscalculated the earned income. The Department used income of \$1687, and the income was actually \$1177.50.

A basic proof required to be presented by the Department in establishing a debt collection is the a calculation of how the total overissuance was determined which can be presented in any format as long as the monthly amounts for each month is shown and the actual benefits received versus the benefits entitled to be received are shown. No such proof, generally presented as an overissuance summary, was provided. It is not sufficient to present FAP budgets for each month and a benefit summary of FAP benefits received, as this requires others to do the math to determine how the overissuance was determined which is the Department's responsibility.

The Department bears the burden of proof to demonstrate that it is entitled to an overissuance and to demonstrate that the Respondent received more FAP benefits than otherwise entitled to receive. The Department must also establish as part of its case that the overissuance as calculated by the Department is correct. The Department, based upon the proofs presented, did not establish that the overissuance amount of

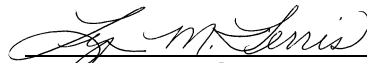
\$3157 was correctly calculated and thus did not establish an overissuance and is not entitled to a finding in its favor that it is entitled to collect a debt in the amount of \$3157.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did not** establish a FAP benefit OI to Respondent totaling \$3157.

DECISION AND ORDER

Accordingly, the Department is **REVERSED**.

The Department is **ORDERED** to **cease** any collection procedures for a \$3157 OI in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
For Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/28/2015**

Date Mailed: **4/28/2015**

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NOTICE OF APPEAL: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

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.

