

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-005264
Issue No.: 3006
Case No.: [REDACTED]
Hearing Date: June 10, 2015
County: Cheboygan

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 June 10, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant, and [REDACTED], husband and Authorized Hearing Representative (AHR). Participants on behalf of the Department of Health and Human Services (Department) included Cindy Pryor, Recoupment Specialist.

ISSUE

Did Claimant receive an overissuance of Food Assistance Program (FAP) 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 received FAP benefits.
2. The Department determined that Claimant received a FAP overissuance (OI) in the amount of \$1,201.00 during the period of April 1, 2014, through March 31, 2015.
3. The overissuance was due to Department error.
4. On March 23, 2015, the Department sent notice of the OI and a repayment agreement to Claimant.
5. On April 14, 2015, Claimant filed a hearing request, protesting the Department's recoupment action.

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 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, DHS must attempt to recoup the overissuance (OI). An overissuance (OI) is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). BAM 700, p 1 (May 1, 2014).

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or DIT staff or department processes. If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4.

A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p 6.

Client and Agency error OIs are not pursued if the estimated OI amount is less than \$250 per program. BAM 700, p 9.

Here, the Department contends that Claimant received an OI of FAP benefits due to Department error. The Department asserted that the Department had not been correctly budgeting Claimant's husband's income from the submitted pay verifications. Specifically, the ENL BAS amounts were not counted as income. Upon a quality control audit, the Department asserts that the ENL BAS portion of the income is countable as a Military Subsistence Supplemental Allowance. BEM 501, July 1, 2014, p. 8, states:

Military Subsistence Supplemental Allowance

All TOA

The Subsistence Supplemental Allowance is paid to certain military personnel. Payments appear on the leave and earnings statement. Count

the allowance as earned income by including them in wage amounts entered in Bridges.

Claimant's husband asserts that the ENL BAS is not a military subsistence supplemental allowance, and was properly excluded in the income budgeted for FAP. Claimant's husband provided copies of excerpts from the Coast Guard Pay Manual, and this ALJ has reviewed additional relevant pages as the COMDTINST M7220.29B is available online at http://www.uscg.mil/directives/cim/7000-7999/CIM_7220_29B.pdf. It appears this version of the COMDTINST M7220.29B has been in effect since February 10, 2012.

Claimant's husband explained that a military subsistence supplemental allowance would have been the Family Subsistence Supplemental Allowance (FSSA), which his family did not receive. COMDTINST M7220.29B describes the FSSA, which is a supplemental allowance paid to certain military personal, and if the member participates in the food stamp program FSSA income must be reported to the food stamp office. COMDTINST M7220.29B pp 3-60 to 3-65.

The BAS ENL portions of the income correlate to the Basic Allowance for Subsistence (BAS) allowance for Enlisted (ENL) members. All enlisted members entitled to basic pay have a continuous entitlement to BAS, with few specified exceptions. All members must pay for any government furnished meals during any period they are entitled to BAS. Certain assignments, including sea duty, require mandatory pay account collection for government furnished meals made available. Pay account collections in these situations will be made at a discount meal rate. Further, pay account collections for members assigned to certain assignments, including sea duty, must be made for all meals, even if the member is on liberty. COMDTINST M7220.29B pp. 3-1 to 3-3.

Claimant's husband's testimony indicated he was assigned to sea duty. Claimant's husband also asserted that he did not really receive the BAS ENL portion of the income. This is supported by the pay verifications. For example, the November 1, 2014, check date shows issuance of ENL BAS in the amount of \$357.55 and an after-tax deduction DSCT MEAL of 314.65. (Department Exhibit A, pg. 21) This correlates to the BAS provisions of the COMDTINST M7220.29B pp. 3-1 to 3-3 that an enlisted member on sea duty would be issued BAS, but there would also be a required mandatory pay account collection for government furnished meals at the discounted rate.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The evidence does not support that the ENL BAS income is a Military Subsistence Supplemental Allowance that would be countable in accordance with BEM 501 policy. Rather, the ENL BAS is a basic subsistence allowance for enlisted members, not a supplemental subsistence allowance that is only paid to certain military personnel. Further, the COMDTINST M7220.29B pp. 3-1 to 3-3 and the pay verifications support Claimant's husband's testimony that most of the ENL BAS is taken back as a required mandatory pay account collection. If any amount of

the ENL BAS is countable as income, the Department would have to exclude the amounts taken back as required mandatory pay account collections.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not establish the overissuance for which the Department presently seeks recoupment.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Delete the alleged FAP overissuance and cease any recoupment action.
2. Issue Claimant supplements to restore FAP benefits that have been withheld for recoupment, if any, for this alleged overissuance.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/15/2015**

Date Mailed: **6/15/2015**

CL / jaf

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 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 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]
Cheboygan
DHS-OIG
D. DeCaire

[REDACTED]
C. Lack
MAHS