

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

IN THE MATTER OF:

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

Reg. No.: 15-006377
Issue No.: 3006
Case No.: ██████████
Hearing Date: May 27, 2015
County: Macomb-District 12

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 three way telephone hearing was held on May 27, 2015, from Detroit, Michigan. The Department was represented by █████ ██████████, Hearings Facilitator and █████ ██████████, Recoupment Specialist. Participants on behalf of Respondent included ██████████.

ISSUE

Did Respondent 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. Respondent was a recipient of FAP benefits from the Department.
2. Respondent began working at ██████████ on May 6, 2014, and received her first paystub on May 30, 2014. (Exhibit B)
3. Respondent reported her employment to the Department in June 2014.
4. The Department failed to timely budget Respondent's reported employment until November 2014.

5. On March 3, 2015, the Department sent Respondent a Notice of Overissuance alleging that she received an OI of FAP benefits totaling \$2723 for the period from August 1, 2014, to November 30, 2014, due to agency error. (Exhibit A)
6. On April 15, 2015, Respondent requested a hearing disputing the Department's actions with respect to the Notice of Overissuance sent on March 3, 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.

In this case, on March 3, 2015, the Department sent Claimant a Notice of Overissuance informing her that from August 1, 2014, to November 30, 2014, the Department determined that she received an agency error OI in FAP benefits in the amount of \$2723. (Exhibit A). The Department stated that the agency error OI was a result of the Department's failure to timely budget Respondent's reported employment at [REDACTED].

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. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or inaccurate information to the Department. BAM 700, p.6. An agency error OI is caused by incorrect actions by the Department, including delayed or no action, which result in the client receiving more benefits than they were entitled to receive. BAM 700, p.4. 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.

According to the March 3, 2015, Notice of Overissuance, the Department alleged that the State of Michigan issued \$2731 in FAP benefits to Respondent from August 1, 2014, to November 30, 2014, and that Respondent was eligible for \$8 in FAP benefits during this period, resulting in an OI of \$2723. (Exhibit A, p. 4). At the hearing, the Department testified that the alleged OI amount (\$2723) listed on the March 3, 2015, Notice of Overissuance was incorrect and that at the time the initial Notice of

Overissuance was sent, the Department relied on estimated income amounts, rather than the actual income received by Respondent to determine the OI amount. The Department failed to present any FAP OI budgets or any documentary evidence concerning how the original \$2723 OI was calculated, including what specific income amounts were used for each month, what Respondent's group size was or how the group was determined to be eligible for \$8 during the alleged OI period.

The evidence established that after Respondent submitted her hearing request disputing the March 3, 2015, Notice of Overissuance, the Department requested verification of Respondent's employment at [REDACTED] and received a detailed pay journal referencing actual income earned and pay dates. (Exhibit C, pp. 3-7). The Department testified that the FAP OI budgets were recalculated for the period at issue and it was determined that the amount of the OI had changed. On May 13, 2015, the Department sent Respondent a Notice of Overissuance alleging that she received an OI of FAP benefits totaling \$2011 for the period from August 1, 2014, to November 30, 2014, due to agency error, as the Department had failed to timely budget all earned and unearned income. (Exhibit C, pp.20-24). According to the May 13, 2015, Notice of Overissuance, the Department alleged that the State of Michigan issued \$2731 in FAP benefits to Respondent from August 1, 2014, to November 30, 2014, and that Respondent was eligible for \$720 in FAP benefits during this period, resulting in an OI of \$2011. (Exhibit C, p. 21).

Although the Department presented FAP OI budgets and there was some discussion on the record concerning how the Department calculated the \$2011 FAP OI, after further review and based on Respondent's April 13, 2015, hearing request date, it is determined that this Administrative Law Judge does not retain jurisdiction to address the Notice of Overissuance that was sent to Respondent on May 13, 2015, as that is a subsequent action and Respondent submitted her hearing request specifically in connection with the March 3, 2015, Notice of Overissuance.

Therefore, based on the Department's testimony at the hearing and the evidence presented, the Department has failed to establish that Respondent was overissued FAP benefits in the amount of \$2723 for the period between August 1, 2014, and November 30, 2014, due to agency error as alleged in the March 3, 2015, Notice of Overissuance.

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 \$2723. Claimant is informed that should she dispute the Department's actions with respect to the May 13, 2015, Notice of Overissuance and the Department's assertion that she received a \$2011 FAP agency error OI, she is entitled to request a new hearing and have that issue resolved.

DECISION AND ORDER

Accordingly, the Department is **REVERSED**.

The Department is ORDERED to delete the \$2723 FAP OI and cease any recoupment action.



Zainab Baydoun
Administrative Law Judge
For Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/5/2015**

Date Mailed: **6/5/2015**

ZB / tlf

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.

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:

Government	Percentage
Current government	100%
Previous government	0%