



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 13, 2016
MAHS Docket No.: 15-006518
Agency No.: [REDACTED]
Respondent: [REDACTED]

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 telephone hearing was held on March 14, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Recoupment Specialist. Respondent appeared for the hearing and represented herself.

ISSUE

Did Respondent receive an over-issuance (OI) 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. On or around March 9, 2011, Respondent submitted an application for FAP benefits. (Exhibit A, pp. 29-44)
2. Respondent reported to the Department through her assistance application that she was employed at Meijer and paid weekly. (Exhibit A, pp. 29-44)
3. Respondent was subsequently approved for and received FAP benefits.

4. In determining Respondent's eligibility for FAP benefits, the Department budgeted Respondent's earnings from employment as monthly income rather than weekly income.
5. On April 8, 2015, the Department sent Respondent a Notice of Overissuance informing her that it determined that she received an OI of FAP benefits totaling \$1200 for the period from March 1, 2011, to May 31, 2011, due to agency error. The explanation of reason was that the worker budgeted the Meijer income as being received monthly instead of weekly. (Exhibit A, pp. 53-57)
6. The Department alleges that Respondent received \$1200 OI that is still due and owing to the Department. The OI was given Claim ID # 100005650996. (Exhibit A, pp. 53-57)
7. On April 17, 2015, Respondent requested a hearing disputing the Department's proposed action. (Exhibit A, p. 58)

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 April 6, 2015, the Department sent Respondent a Notice of Overissuance informing her that from March 1, 2011, to May 31, 2011, it determined that she received an agency error caused OI in FAP benefits in the amount of \$1200 as a result of the Department's under-budgeting of Respondent's income from employment.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (October 2015), 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 (October 2015), p. 6; BAM 705 (October 2015), p. 6.

The Department presented a benefit summary inquiry to establish that during the period of March 1, 2011, through May 31, 2011, it issued \$1359 in FAP benefits to Respondent. (Exhibit A, p. 52). The Department alleged that after correctly budgeting Respondent's income as weekly income, Respondent was eligible to receive \$159 in FAP benefits during this period which resulted in an OI of FAP benefits in the amount of \$1200. In support of its OI calculation, the Department presented verification of Respondent's employment at Meijer through the Work Number which shows that she was employed and paid weekly. The verification of employment details the amounts earned and pay dates. (Exhibit A, pp. 23-27).

The Department also presented FAP OI budgets for each month showing how the OI was calculated. A review of the FAP OI budgets and the verification of income/employment establishes that when Respondent's weekly earnings are included in the calculation of her FAP benefits, she was eligible to receive \$159 in total FAP benefits for the months of March 2011, April 2011, and May 2011. (Exhibit A, pp. 45-51).

Thus, the Department is entitled to recoup or collect from Respondent \$1200, the difference between the \$1359 in FAP benefits actually issued to her and the \$159 in FAP benefits she was eligible to receive.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish a FAP benefit OI to Respondent totaling \$1200.

At the hearing however, Respondent asserted that the Department had already collected the \$1200 OI, as \$1217 was deducted from her 2015 Federal Tax Refund. Respondent presented a letter from the Department of the Treasury dated February 16, 2016, which shows that \$1217 of her federal tax refund/payment was applied towards a debt and that the agency collecting on the debt was the Department. (Exhibit 1).

The Department stated that it was unaware of the collection and was unable to verify whether or not the Department had received the \$1217 payment from the Department of the Treasury and could not identify if the tax refund had been used to repay on the collectible FAP OI of \$1200. The Department confirmed that there were no other over-issuances, recoupments or collection actions related to Respondent's cases with the Department.

BAM 725 provides that federal tax refunds may be offset to repay any collectible FAP OI when the claim is delinquent. Once an OI is selected for this process, the case will be identified on Benefit Recovery System and the client is to be referred to the

Reconciliation and Recoupment Section (RRS) to request a review of the collection action. BAM 725, pp.11-12.

Delinquency is triggered when: the client fails to sign and return the DHS-4358C, Department and Client Error Information and Repayment Agreement, within 30 days of the claim establishment date; the client fails to make a \$50 monthly cash payment within those same 30 days if the case is closed; the client on the closed case fails to make full payments each month until the claim is paid off; or when previously active clients who were being administratively recouped and now have closed did not make the \$50 monthly payment within 30 days after the DHS-1440A, Notice of Balance Due, was sent and each month thereafter. When a claim becomes delinquent, Bridges refers qualifying FAP claims to the Treasury Offset Program (TOP). BAM 725, p. 10.

In this case, the Department failed to establish that Respondent's FAP OI claim was in delinquency status, as she timely requested an administrative hearing after receiving the Notice of Overissuance dated April 8, 2015, which should have suspended any collection action. BAM 725, p. 13. Additionally, the Department failed to establish that it properly referred Respondent's claim to the RRS and provided her with the right to review the collection action, as required by Department policy. Furthermore, there was no evidence presented that the Department properly notified Respondent of the alleged delinquency by sending her the DHS-1440-1, Notice of Default. BAM 725, p. 10.

Notwithstanding the Department's failure to comply with the above referenced policies regarding the premature collection of the \$1200 FAP OI/debt through the offset of her federal tax refund, a review of the Respondent's April 17, 2015, hearing request indicates that she requested a hearing to dispute the information contained in the April 8, 2015, Notice of Overissuance and the Department's determination that she received an agency error caused OI of FAP benefits that the Department is entitled to recoup.

At the time that Respondent filed her request for hearing, the Department had not collected Respondent's federal tax refund to offset the FAP OI/debt, as the letter sent to Respondent by the Department of the Treasury was dated February 10, 2016. Therefore, the February 2016 collection action taken by the Department is determined to be a subsequent action that the undersigned Administrative Law Judge does not retain any jurisdiction to address in light of Respondent's April 17, 2015, request for hearing. See BAM 600 (October 2015). Respondent is informed that should the Department send her any notices concerning the \$1200 FAP OI/debt at issue in this case, she is entitled to request a hearing to dispute the additional collection of funds already paid to the Department.

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

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. Prior to initiating any additional collection procedures towards the \$1200 FAP OI under Claim ID [REDACTED], the Department is ORDERED to investigate and verify whether or not the Department has already received an offset or payment of the debt through the collection of Respondent's federal tax refund;
2. It is further ORDERED that if the Department has NOT received an offset or payment of the \$1200 FAP OI under Claim ID [REDACTED], the Department is ORDERED to initiate collection procedures for a \$1200 FAP OI in accordance with Department policy; and
3. The Department is to notify Respondent in writing of its decision.



Zainab Baydoun

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

ZB/tlf

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

Hearings Coordinator
1399 W. Center Road
Essexville, MI
48732

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via Electronic Mail:

DHS OIG Hearings
[REDACTED]
[REDACTED]
MAHS