

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

IN THE MATTER OF:

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

Reg. No.: 15-007434
Issue No.: 3006
Case No.: ██████████
Hearing Date: June 18, 2015
County: WAYNE-DISTRICT 18

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 June 18, 2015, from Detroit, Michigan. The Department was represented by ██████████ Recoupment Specialist.

Participants on behalf of Claimant included ██████████ and ██████████.

ISSUE

Did Claimant receive an OI of Food Assistance Program (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. On April 17, 2015, Claimant was sent a Notice of Overissuance, showing an alleged debt owing to the Department as a result of a client error during the time period of March 1, 2010 through May 31, 2012.
2. Claimant was alleged to have been overissued ██████████ in FAP benefits.
3. On May 11, 2015, the Department requested a hearing to establish the debt.

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.

In this case, the Department has failed to provide to sufficient documentation to establish a debt. As such, the Department has failed to meet their burden of proof in establish a debt owed by the Claimant. The undersigned cannot hold that any overissuance occurred.

The budgets submitted by the Department and the supporting evidence used to establish those debts are, to state mildly, flawed.

Among errors found in a cursory glance by the undersigned, are incorrect income figures for several months. When asked as to how certain income figures used in the budget were arrived upon, the Department was unable to articulate a satisfactory answer. For instance, in the month of March, 2010, the Department uses an earned income figure of [REDACTED]. Adding the actual paychecks received, the figure the undersigned came up with was [REDACTED]. Most of the budgets had errors such as this.

Furthermore, the recoupment specialist stated that some of the income had been calculated by averaging each monthly paycheck received, and then multiplying a weekly average by 4.3. While this method is correct for prospecting future income, per policy, this is incorrect when determining recoupment.

Per policy found in BAM 715 pg. 8, (2014), if improper reporting or budgeting of income caused the overissuance, use actual income for that income source. The Department is not to prospect income to determine recoupment amounts.

Furthermore, at one point, the recoupment specialist added a member to the group (and included the new group member's income in the recoupment budget), that the Claimant had reported had left the group, and for whom the Department, when processing the case, had removed from the group. There did not appear to be any basis to re-add this group member, and when questioned, the recoupment specialist was unable to articulate a satisfactory reason for doing so other than repeated explanations that her reasoning could be found in the hearing packet, and appeals to the vagaries of the Department's own forms. The undersigned did not find this reasoning sufficient.

As such, the undersigned holds that the Department has failed to prove that the requested recoupment is correct. The budgets submitted were clearly erroneous, and have no factual basis supporting them. As such, no recoupment may be authorized.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it alleged Claimant had a client error overissuance of [REDACTED] in FAP benefits.

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. Remove the over-issuance in question from the Claimant's case file, and cease any recoupment action in the above matter.



Robert J. Chavez
Administrative Law Judge
For Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/29/2015**

Date Mailed: **6/29/2015**

RJC / tm

NOTICE OF APPEAL: The law provides that within 30 days of receipt of the above Hearing Decision, the Claimant 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:

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