

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-011828
Issue No.: 3007
Case No.: [REDACTED]
Hearing Date: August 27, 2015
County: JACKSON

ADMINISTRATIVE LAW JUDGE: Gary Heisler

HEARING DECISION

Upon a hearing request by the Department of Health and Human Services (Department) to establish an over-issuance (OI) of benefits to Respondent, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 400.43a, and 24.201, *et seq.*, and Mich Admin Code, R 400.941, and in accordance with 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. After due notice, a telephone hearing was held on August 27, 2015, from Lansing, Michigan. Claimant appeared and testified. Participants on behalf of the Department included Recoupment Specialist (RS) [REDACTED].

ISSUE

Did Claimant receive a \$ [REDACTED] Client Error over-issuance of Food Assistance Program benefits from July 1, 2014 to October 31, 2014?

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 was a recipient of Food Assistance Program benefits from the Department. Her benefit group consisted of herself, her three children, [REDACTED] her living together partner, and [REDACTED]'s 10 year old son.
2. On June 2, 2014, Claimant submitted a Redetermination (DHS-1010) indicating [REDACTED] and his son were no longer in the household.
3. On July 11, 2014, Claimant and [REDACTED] were married.
4. On September 7, 2014, Claimant reported [REDACTED] and his son were back in the household.

5. On November 6, 2014, Claimant was sent a Wage Match Client Notice (DHS-4638) regarding earned income for [REDACTED].
6. On November 19, 2014, the Department received employment verification for [REDACTED].
7. On March 2, 2015, an Over-Issuance Referral was made regarding unreported earnings for [REDACTED].
8. On March 9, 2015, Claimant was sent a Notice of Over-Issuance (DHS-4358) packet.
9. On March 26, 2015, Claimant submitted a timely hearing request.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of 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 .3011.

Bridges Administration Manual (BAM) 715 Client/CDC Provider Error Over-Issuance (7-1-2014) governs the processing of a Client Error Over-Issuance. It provides in part:

OVERISSUANCE PROCESSING Recoupment Specialist Referral

FIP, SDA, CDC and FAP

Bridges refers most client errors to the RS. Use the DHS-4701, Over-issuance Referral, to refer manual over-issuances.

Complete all sections of the DHS-4701 and attach the potential evidence. Send it to the RS for your local office or region. A recoupment specialist list is in DHS-Net, Tools under Directories. The listing provides RS contact information by county and district.

The DHS-4701 must be sent to the RS within 60 days of suspecting an over-issuance.

OVER-ISSUANCE PERIOD

All Programs

Begin Date

FIP, SDA, CDC and FAP

The over-issuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy **or** 72 months before the date it was referred to the RS, whichever is later.

To determine the first month of the over-issuance period (for over-issuances 11/97 or later) Bridges allows time for:

The client reporting period, per BAM 105.

The full standard of promptness (SOP) for change processing, per BAM 220.

The full negative action suspense period; see BAM 220, Effective Date of Change.

OVER-ISSUANCE AMOUNT

FIP, SDA, CDC and FAP

The amount of the over-issuance is the benefit amount the group or provider actually received minus the amount the group was eligible to receive.

HEARING REQUESTED

FIP, SDA, CDC and FAP

Active Cases

A hearing request on a DHS-4358D, Hearing Request for Over-Issuance or Recoupment Action, must be forwarded to MAHS along with a completed DHS-3050, Hearing Summary, and exhibits according to normal hearing procedures; see BAM 600.

Received Timely

If the request is received within the negative action effective date, update the status field in Claim Adjustment.

If DHS is **not** upheld, use Claim Adjustment to decrease balance to zero with hearing decision for reason. This will close the over-issuance.

Claimant does not argue against inclusion of [REDACTED]'s income in determining the amount of Food Assistance Program benefits her group was eligible for. During this hearing Claimant testified that [REDACTED] has sole custody of his son and that his son moved out with him and back in with him. Claimant asserts that the over-issuance amount is incorrect because the calculations were made for a group size of 5 instead of 6. Bridges Eligibility Manual (BEM) 212 Food Assistance Program Group Composition (7-1-2014) provides guidance on determination of a FAP benefit group. It provides in part:

DEPARTMENT POLICY

Bridges will help determine who must be included in the Food Assistance Program (FAP) group prior to evaluating the non financial and financial eligibility of everyone in the group.

Food Assistance Program group composition is established by determining all of the following:

Who lives together.

The relationship(s) of the people who live together.

Whether the people living together purchase and prepare food together or separately.

Whether the person(s) resides in an eligible living situation; see **LIVING SITUATIONS** in this item.

RELATIONSHIPS

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First, determine if they **must** be included in the group. If they are **not** mandatory group members, then determine if they purchase and prepare food together or separately.

Spouses

Spouses who are legally married and live together **must** be in the same group.

Parents and Children

Children include natural, step and adopted children.

Parents and their children **under** 22 years of age who live together **must** be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group.

Primary Caretaker

The primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period.

LIVING WITH

Living with means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area such as an entrance or hallway or non-living area such as a laundry room are **not** considered living together.

For policy regarding persons in other group living situations; see BEM 617.

Temporary Absence

A person who is temporarily absent from the group is considered living with the group.

A person's absence is temporary if all of the following are true:

The person's location is known.

The person lived with the group before an absence.

There is a definite plan for return.

The absence has lasted or is expected to last 30 days or less.

Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home.

During this hearing the Recoupment Specialist testified that she was only told that [REDACTED] should be added back into the group. No one told her there was a child who would need to be added back into the group. The Recoupment Specialist also testified that Claimant's Food Assistance Program benefit issuance from November 2014 ongoing was for a group size of 6. The Recoupment Specialist also testified that she ran some of the FAP over-issuance budgets for a group size of 6 and it reduced the over-issuance amount a small amount.

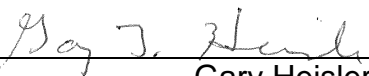
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of evidence to establish that Claimant received a \$ [REDACTED] Client Error

over-issuance of Food Assistance Program benefits from July 1, 2014 to October 31, 2014.

DECISION AND ORDER

Accordingly, the Department's decision is **NOT UPHELD**.

Refer to BAM 715, cited above, for the action to take when not upheld.



Gary Heisler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **8/28/2015**

Date Mailed: **8/28/2015**

GFH / 

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:

