

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-016755
Issue No.: 3006
Agency Case No.: [REDACTED]
Hearing Date: November 09, 2015
County: Oakland (3) Southfield

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, an in-person hearing was held on November 9, 2015, from Southfield, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by [REDACTED]. The Respondent's spouse, [REDACTED], also appeared as a witness.

ISSUE

Did Respondent receive an overissuance (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. Respondent is a current recipient of FAP benefits from the Department.
2. The Department alleges Respondent received an FAP OI during the period October 1, 2011, through November 30, 2011, due to **(Respondent's)** client error.
3. The Department sent the Respondent a Notice of Overissuance dated August 28, 2015, seeking to recoup \$ [REDACTED] in overissued FAP benefits resulting from the Respondent's failure to timely report her spouse's receipt of RSDI benefits thereby resulting in Respondent receiving more FAP benefits

than she was otherwise entitled to receive in accordance with Department policy. The Department indicated that this matter arose from client error. Exhibit 1.

4. The Respondent's spouse began receiving Retirement, Survivors and Disability Insurance (RSDI) on August 17, 2011, but did not report the income until November 2011.
5. During the period of overissuance, the Respondent received FAP benefits in the amount of \$ [REDACTED] and was only entitled to receive \$ [REDACTED] resulting in an overissuance of \$ [REDACTED] for October 2011. During November 2011, Respondent received FAP benefits in the amount of \$ [REDACTED] and was only entitled to receive \$ [REDACTED] resulting in an overissuance of \$ [REDACTED]. The total FAP overissuance was \$ [REDACTED]. Exhibit 3.
6. The Respondent reported the RSDI income at the next redetermination dated November 2011. After the income was reported, the FAP benefits were reduced.
7. The Respondent was provided a change report on November 23, 2010, after the November 2010 redetermination FAP review, which advised the Respondent that changes in household income must be reported. Exhibits 5 and 6.
8. The Department alleges that Respondent received a \$ [REDACTED] OI that is still due and owing to the Department.
9. The Respondent requested a timely hearing on September 24, 2015, protesting the Department's actions.

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.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance (OI). BAM 700 (May 2014), p. 1.

The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715 (July 2014), p. 6.

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715, p. 1.

This matter arises out of an administrative recoupment by the Department due to the Respondent's receipt of a FAP benefit overissuance of \$ [REDACTED]. Because the Respondent is still an ongoing FAP recipient, the Department is entitled to an administrative recoup the overissuance from the Petitioner's current FAP benefits.

Active programs are subject to Administrative Recoupment (AR) for repayment of overissuances.

FAP benefits are reduced for recoupment by a percentage of the **monthly FAP entitlement**. (The entitlement amount is the amount of FAP a group would receive if any intentional program violation-disqualified members were included in the eligible group.)

Administrative recoupment occurs only on current month issuances and automatically changes when the monthly issuance amount changes.

Use the standard administrative recoupment percentage unless a court has ordered a different administrative recoupment percentage or a specific dollar amount. The minimum administrative recoupment amount is \$10, unless the final overissuance payment is less than \$10.

The standard administrative recoupment percentage for FAP is: 10% (or \$10 whichever is greater) for client error. BAM 725(October 1, 2015) p. 17.

In this case, the Respondent's spouse began receiving RSDI in August 2011, which was not reported timely. The Department provided two FAP overissuance budgets that were reviewed at the hearing for October and November 2011, the two-month overissuance period. The unearned income from RSDI in the amount of \$ [REDACTED] was determined as correct, as was the group size of 5 correct. The Department also included rent of \$ [REDACTED] and a heat allowance of \$ [REDACTED] which was also correct resulting in an excess shelter allowance of \$ [REDACTED] leaving net income of \$ [REDACTED]. The correct FAP benefit was \$ [REDACTED] the respondent had received \$ [REDACTED] thus, resulting in an overissuance for each of the two months of \$ [REDACTED]. Exhibits 4 and 5.

The reason the Department determined client error was the client was provided a change report on November 23, 2010, after the November redetermination FAP review,

which advised the Respondent that changes in household income must be reported. The change in income was not timely reported; and thus, the overissuance resulted from the Respondent's failure to report the income increase from RSDI. The change report clearly advises that the Respondent report changes within 10 days. Exhibits 5 and 6. Department policy requires:

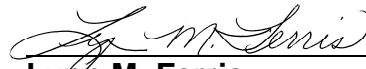
Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2014), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. Other changes must be reported within 10 days after the client is aware of them. BAM 105, (July 1, 2015), p. 10. These include, but are not limited to, changes in persons in the home. See BAM 105, p. 10-11.

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 \$ [REDACTED] for the period October 1, 2011, through November 30, 2011.

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

The Department is **ORDERED** to initiate administrative recoupment collection procedures for a \$ [REDACTED] OI in accordance with Department policy.



Lynn M. Ferris

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: **11/13/2015**

LMF/jaf

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:

