

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

IN THE MATTER OF:

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MAHS Reg. No.: 15-021973
Issue No.: 3008
Agency Case No.: ██████████
Hearing Date: January 19, 2016
County: Macomb-District 36

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on January 19, 2016, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Recoupment Specialist.

ISSUE

Did the Petitioner receive an overissuance (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. Petitioner was an ongoing recipient of FAP benefits.
2. Petitioner was employed as a waitress at ██████████ and received wages and tips.
3. The Department failed to budget all of Petitioner's income from employment (wages and tips) in the calculation of her FAP benefit eligibility.
4. On November 20, 2015, the Department sent Petitioner a Notice of Overissuance alleging that she received an OI of FAP benefits totaling \$1649 for the period of June 1, 2014, to May 31, 2015, due to agency error. (Exhibit 1, pp.1-5)

5. On December 2, 2015, Petitioner filed a hearing request disputing 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), 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 alleges that from June 1, 2014, to May 31, 2015, Petitioner received a \$1649 agency error caused OI in FAP benefits because the Department failed to correctly budget Petitioner's wages and tips from her employment.

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 (May 2014 and July 2014), p. 6; BAM 705 (May 2014 and July 2014), p. 6.

The Department presented documentation to establish that during the period between June 1, 2014, and May 31, 2015, Petitioner was issued \$3527 in FAP benefits by the State of Michigan. The Department alleges that Petitioner was entitled to \$1878 in such benefits during this time period, resulting in an OI of FAP benefits of \$1649. (Exhibit A, pp.1-4). In support of its OI case, the Department presented Verification of Petitioner's employment, including an Employee Earnings Record which details the dates, amount she was paid in wages and cash tips and the pay periods of her earnings. (Exhibit A, pp. 30-33).

At the hearing, Petitioner asserted that she receives her cash tips each day that she works and that they are not included in her biweekly pay check. Petitioner stated that while the cash tips are referenced on the earnings records and paystubs, she receives

them prior to being paid her wages via check. Petitioner asserted that the Department's monthly income calculation is inaccurate because it includes tips that she received in the periods prior. Petitioner provided paystubs for the period at issue, which contain the same information as that in the Employee Earnings Statement and have the same amounts of wages and cash tips per pay period. (Exhibit 1, pp. 6- 35). Petitioner did not dispute the Department's position that the amounts of tips budgeted were correct or that she earned the amounts reflected in the earnings statements.

A review of the FAP OI budgets and Verification of Employment/Employee Earnings Record and paystubs provided for each month in the OI period establishes that when Petitioner's cash tips are included in the calculation of her monthly FAP benefits, she was eligible to receive \$1878 in FAP benefits for the period between June 1, 2014, and May 31, 2015. Although the months in which the cash tips were applied may be inaccurate according to Petitioner's testimony, a review of Department policy indicates that the Department appropriately relied on the information contained in the earnings statements and paystubs when budgeting Petitioner's income from cash tips and established that the overall OI amount is correct. BEM 501 (July 2014), pp. 10-11.

Thus, the Department is entitled to recoup or collect from Petitioner \$1649, the difference between the \$3527 in FAP benefits actually issued to her and the \$1878 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 Petitioner totaling \$1649.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

The Department is **ORDERED** to initiate recoupment and/or collection procedures for a \$1649 agency error FAP OI in accordance with Department policy.



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

Date Signed: **1/26/2016**

Date Mailed: **1/26/2016**

ZB / tlf

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

