



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: March 10, 2016  
MAHS Docket No.: 15-024652  
Agency No.: [REDACTED]  
Petitioner: Department  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

**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 February 29, 2015, from Detroit, Michigan. The Department was represented by [REDACTED] [REDACTED], Eligibility Specialist/Hearing Facilitator, and [REDACTED] [REDACTED], Recoupment Specialist. Respondent appeared and represented herself.

**ISSUE**

Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits totaling \$8630 for the period August 1, 2011 to August 31, 2012?

**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 was a recipient of FAP benefits from the Department.
2. On August 4, 2015, the Department sent Respondent a Notice of Overissuance notifying her that she was overissued FAP benefits during the period August 1, 2011, through August 31, 2012, due to Department error (Exhibit A, pp. 4-8).
3. The Department alleges that Respondent received an \$8630 OI that is still due and owing to the Department.

4. On August 24, 2015, the Department received Respondent's request for hearing disputing the OI.

### **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 entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), p. 1. The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 700, p. 1; BAM 705 (July 2014), p. 6.

In this case, the Department alleges that, because it failed to budget Respondent's husband's employment income, Respondent received FAP benefits totaling \$8630 for the period from August 1, 2011 to August 31, 2012 and was not eligible for any of those FAP benefits.

To establish the OI amount, the Department presented FAP OI budgets for each month at issue showing the FAP benefits Respondent was eligible to receive if her husband's income had been included in the calculation of the household's FAP eligibility for each month between August 2011 and August 2012. The Department testified that it calculated Respondent's husband's income for each month based on averaged pay information from a consolidated inquiry showing quarterly income received by Respondent's husband from his employer, as reported by the employer (Exhibit A, p. 57). However, Department policy requires that the Department consider *actual income* for each of the months at issue. BAM 705, p. 7.

In this case, the issuance summary (Exhibit A, p. 9) indicates that quarterly wage totals were used (and divided by three to determine average monthly household income) because actual income was not available. However, at the hearing the recoupment specialist testified that she had not requested verification of employment income from Respondent's husband's employer. Because the Department failed to use actual income and failed to establish that actual income was not available, the Department did not act in accordance with Department policy when it calculated the FAP OI.

It is further noted that Department policy also provides that income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM705, p. 7. The Department acknowledged that the issuance budgets had improperly excluded Respondent's husband's income but had been including Respondent's income from August 2011 through December 2011. Although the Department did not present any evidence that Respondent's employment income had been improperly budgeted, in calculating the FAP OI, it also recalculated Respondent's employment income for those months, using average monthly income based on quarterly earnings reported by Respondent's employer. Because there was no evidence that Respondent's income had been improperly budgeted in the issuance budget and, even if it was, that actual income was not available, the Department did not act in accordance with Department policy when it recalculated Respondent's employment income in the August 2011 through December 2011 FAP OI budgets.

Because the Department did not act in accordance with Department policy when it calculated the FAP OI, the Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did not** establish a FAP benefit OI to Respondent totaling \$8630.

### **DECISION AND ORDER**

Accordingly, the Department is REVERSED.

The Department is ORDERED to delete the FAP OI for the period August 2011 to August 2012 in its entirety in accordance with Department policy.



ACE/tlf

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**Alice C. Elkin**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

**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**

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

**Respondent**

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

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