



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: October 31, 2016  
MAHS Docket No.: 15-025926  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Susanne E. Harris

### **DECISION AND ORDER OF REHEARING**

This matter is before this undersigned Administrative Law Judge pursuant to a timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge at the conclusion of the hearing conducted on July 19, 2016.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provides that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs at issue, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Rehearing/Reconsideration was generated September 1, 2016.

### **ISSUE**

Did the Administrative Law Judge err in failing to conclude whether or not that the Respondent received an OI of the Food Assistance Program (FAP) in the amount of \$ [REDACTED] that the Department is entitled to collect?

### **FINDINGS OF FACT**

Upon a review of the entire hearing record, including the recorded testimony and evidence admitted, in addition to a review of the applicable law and policy governing the issues in this matter, this Administrative Law Judge makes the following findings of fact:

1. The Department's OIG filed a hearing request on November 10, 2015, to establish an OI of benefits received by the Respondent as a result of the Respondent having allegedly committed an IPV.
2. The OIG has requested that the Respondent be disqualified from receiving program benefits.
3. The Respondent was a recipient of FAP benefits issued by the Department.
4. The Respondent was aware of the responsibility to report changes in household circumstances to the Department, within 10 days.
5. The Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the OI period is March 1, 2013 to January 31, 2014.
7. During the OI period, the Respondent was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department alleges that the Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that the Respondent received an OI in FAP benefits in the amount of \$ [REDACTED]
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to the Respondent at the last known address and was not returned by the US Post Office as undeliverable.
11. Testimony during the hearing indicates that the case was referred to the OIG on March 6, 2014.
12. A Rehearing was granted by Administrative Law Manager Marya Nelson-Davis on September 1, 2016 and assigned to Administrative Law Judge Susanne E. Harris.
13. A de novo hearing was conducted on October 13, 2016.

### **CONCLUSIONS OF LAW**

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

Additionally, BAM 700 (2016) p. 1, provides that when a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. There are three types of OI; agency error, client error and Intentional Program Violation (IPV). pp. 4, 5. An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between department divisions such as services staff.
- Data exchange reports were not acted upon timely.

If the Department is unable to identify the type of error, it is to be recorded as an agency error. pp.4, 5.

A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, and any of the following occurred:

- The hearing request is later withdrawn.
- MAHS denies the hearing request.
- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.
- The hearing decision upholds the Department's actions; see BAM 600.

BAM 705 (2016) p. 6, provides that the amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 715 (2006) p. 8, provides that for client error OI is due, at least in part, to failure to report earnings, the Department's worker is not to allow the 20% earned income deduction on the unreported earnings.

In this case, the Administrative Law Judge is to resolve the issue of whether or not the Respondent received an OI of the FAP in the amount of [REDACTED] that the Department is entitled to collect. Having closely examined the record in this matter, the Administrative Law Judge determines that the OI period is alleged to have run from March 1, 2013 until January 31, 2014. However, there are OI budgets in evidence from February, 2014. It could not be determined whether or not the February OI budget figures were counted in the overall OI when the OI period is alleged to have ended January 31, 2014. This is particularly true because there are illegible markings on the OI budgets in evidence. The Regulation Agent at the hearing was given an opportunity to explain the markings and calculations, but could not. The Regulation Agent testified that the OI budgets were produced by a Recoupment Specialist who was not present at the hearing. As such, the Administrative Law Judge concludes that the Department does not meet its burden of establishing that the Respondent received an OI of the FAP in the amount of \$ [REDACTED]

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Administrative Law Judge did not err in failing to conclude that the Respondent received an OI of the Food Assistance Program (FAP) and Family Independence Program (FIP) in the amount of \$ [REDACTED] that the Department is entitled to collect. Accordingly, it is ordered that the hearing decision of the Administrative Law Judge generated at the conclusion of the July 19, 2016, hearing and mailed on July 21, 2016, is AFFIRMED.



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Susanne E. Harris  
Administrative Law Judge  
for Nick Lyons, Director  
Department of Health and Human Services

SH/nr

**NOTICE:** The law provides that within 30 days of receipt of the above Reconsideration Decision and Order, the the Petitioner may appeal it to the circuit court for the county in which he/she lives.

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]