



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 28, 2016
MAHS Docket No.: 15-027020
Agency No.: [REDACTED]
Petitioner: DHHS
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

HEARING DECISION

Upon the request for a hearing by Respondent, 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 three-way telephone hearing was held on September 22, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Recoupment Specialist. The Respondent appeared on her own behalf and provided testimony. Also, [REDACTED], Assistant Payment Supervisor, from the Department, was present for the hearing.

ISSUE

Did Respondent receive an over-issuance (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 was an ongoing recipient of FAP benefits. Exhibit A, pp. 47-48.
2. On February 25, 2015, the Department sent Respondent a Notice of Overissuance (OI notice) informing her of a FAP OI for the period of January 1, 2011 to September 30, 2011, due to client error. Exhibit B, pp. 1-6. The OI notice also indicated that the OI balance was [REDACTED] but the Department amended the OI to [REDACTED]. Exhibit A, p. 3 and Exhibit B, p. 1.

3. On March 1, 2015, Respondent filed a hearing request, protesting the Department's action. Exhibit A, p. 2.
4. On June 30, 2016, the Michigan Administrative Hearing System (MAHS) sent Respondent a Notice of Debt Collection Hearing informing her of a hearing scheduled on July 20, 2016.
5. On August 22, 2016, an Administrative Law Judge issued an Order of Adjournment.
6. On September 1, 2016, MAHS sent Respondent a Notice of Debt Collection Hearing informing her of a hearing scheduled on September 22, 2016.

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 it is entitled to receive, the Department must attempt to recoup the overissuance. 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 overissuance 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.

In this case, the Department alleges that Respondent failed to timely report her son's employment and wages to the Department, which caused an overissuance of FAP benefits.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2011), p. 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 7.

Income reporting requirements are limited to the following:

- Earned income:
 - Starting or stopping employment.
 - Changing employers.
 - Change in rate of pay.
 - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 7.

First, the Department presented Respondent's wage match client notice (wage match) received on [REDACTED], which showed that the son was employed from [REDACTED] to [REDACTED]. Exhibit A, pp. 27-29. The wage match did show the son's employment earnings from on or about [REDACTED]. Exhibit A, p. 29.

Second, the Department also presented a "Quarterly Wage Match Inquiry" that showed the son received employment wages from 4th quarter [REDACTED] to 4th quarter [REDACTED]. Exhibit A, p. 4.

Third, during the hearing, Respondent argued that she never received any FAP benefits during the alleged OI period. In response, the Department presented evidence showing that Respondent received FAP benefits during the alleged OI period and that the benefits closed effective October 1, 2011. See Exhibit A, pp. 34-42 and 47-56.

Fourth, the Department presented a Notice of Case Action dated August 24, 2011, which notified Respondent that her FAP benefits would close effective October 1, 2011 because she failed to report new employment, and failed to provide all income information needed from the date of hire for herself and her son. See Exhibit A, pp. 50-55. Based on the Notice of Case Action, it appears the Department was aware of the son's income on or about August of 2011. Exhibit A, p. 50.

Fifth, on May 4, 2016, the Department testified that it had already recouped and/or collected [REDACTED] from Respondent via a tax offset. In response, Respondent testified that the Department had actually collected [REDACTED] via a tax offset on May 9, 2016. Neither party could provide documentation showing the actual amount the Department had collected. But, the undersigned Administrative Law Judge would like to note that the Department testified that it was no longer seeking an OI of [REDACTED], but instead, amended the OI to [REDACTED]. However, the Department testified that it had already collected [REDACTED] which is higher than the [REDACTED] OI sought in this case. It is unclear why the Department collected a higher OI than the amount sought in this case. See BAM 725 (July 2014), pp. 10-12 (Collection actions, including tax offsets).

Sixth, the Department presented OI budgets for the period of January 2011 to September 2011. Exhibit A, pp. 3-26 and 45-46. It should be noted that the Department presented an amended OI budget for September 2011, which is the reason why the Department decreased the alleged OI sought in this case. Exhibit A, pp. 45-46. The undersigned reviewed the OI budgets and determined that they are inaccurate. In this case, the Department budgeted Respondent's income by taking the monthly average from her quarterly earnings. For example, Respondent's quarterly wage history reported her total earnings for the second quarter of (██████████) to be (██████████). Exhibit A, p. 4. As a result, the Department calculated Respondent's monthly income from (██████████) to be (██████████) divided by 3 months). Exhibit A, pp. 11-16.

Policy states if improper reporting or budgeting of income caused the overissuance, the Department uses the actual income for that income source. BAM 715, p. 8. The Department converts all income to a monthly amount. BAM 715, p. 8. Exception, for FAP only, do not convert the averaged monthly income reported on a wage match. BAM 715, p. 8. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 715, p. 8.

Based on the above policy, the Department is unable to use Respondent's average monthly income as a method in determining her budgetable income for each OI month. See BAM 715, p. 8. In the present case, the Department failed to provide sufficient verifications to show the actual income Respondent received for each OI month (i.e., payroll stubs). Because the Department failed to establish that it properly budgeted Respondent's income in the OI budgets, the Department did not satisfy its burden of showing that Respondent received an OI for the FAP benefits. See BAM 700, p. 1 and BAM 715, p. 8.

DECISION AND ORDER

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 (██████████) and/or (██████████) (amended OI) for the period of January 1, 2011 to September 30, 2011.

Accordingly, the Department is **REVERSED**.

The Department is **ORDERED** to delete the OI and cease any recoupment and/or collection action.

The Department is **FURTHER ORDERED** to reimburse Respondent any funds that had already been recouped and/or collected in accordance with Department policy.

EF/tm



Eric J. Feldman
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]

[REDACTED]

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

CC:

[REDACTED]
[REDACTED]
[REDACTED]