



RICK SNYDER  
GOVERNOR

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

MIKE ZIMMER  
DIRECTOR



Date Mailed: April 25, 2016  
MAHS Docket No.: 16-000150  
Agency No.: [REDACTED]  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

**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 April 14, 2016, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], recoupment specialist. Respondent did not appear. This matter having been initiated by MDHHS and due notice having been provided to Respondent, the hearing was held in Respondent's absence.

**ISSUE**

The issue is whether MDHHS established a debt against Respondent for \$2,106 in allegedly over-issued 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. As of February 2010, Respondent and his son received \$2,023/month in combined RSDI benefits.
2. As of April 2010 through September 2010, Respondent was an ongoing FAP recipient.
3. From April 2010 through September 2010, Respondent received \$2,202 in FAP benefits, in part, based on \$0 income.

4. From April 2010 through September 2010, Respondent should have received \$96 in FAP benefits.
5. On [REDACTED], MDHHS requested a hearing seeking to establish a debt of \$2,106 against Respondent.
6. On [REDACTED] MDHHS mailed Respondent a Notice of Overissuance which alleged Respondent received an overissuance of \$7,497 in FAP benefits, due to agency error, over the period from March 2014 through October 2015.
7. On [REDACTED], Respondent requested a hearing to dispute the overissuance.
- 8.
9. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received a hearing request from MDHHS to establish a debt against Respondent.

### **CONCLUSIONS OF LAW**

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS requested a hearing to establish a debt against Respondent. MDHHS alleged Respondent received \$2,106 in over-issued FAP benefits over the period from April 2010 through September 2010.

When the client group or CDC provider receives more benefits than entitled to receive, Michigan Department of Health and Human Services (MDHHS) must attempt to recoup the overissuance. BAM 725 (October 2015), p. 1. Repayment of an overissuance is the responsibility of:

- Anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred.
- A FAP-authorized representative if they had any part in creating the FAP overissuance

*Id.*, p. 1.

Recoupment policies and procedures vary by program and overissuance type. BAM 715 (October 2015), p. 1. When a potential overissuance is discovered, [MDHHS is to] do all of the following:

1. Take immediate action to correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
  2. Obtain initial evidence that an overissuance potentially exists.
  3. Determine if it was caused by department, provider or client actions. [and]
  4. Refer all client errors to the RS [recoupment specialist] within 60 days of suspecting or if a suspected overissuance exists
- Id.*, p. 2

Within 60 days of receiving the referral, the RS must... determine if an overissuance actually occurred [and] determine the type. *Id.*, p. 3. Within 90 days of determining an overissuance occurred, the RS must:

- Obtain all evidence needed to establish it.
- Calculate the amount.
- Establish the discovery date.
- Send a DHS-4358A, B, C & D to the client.
- Enter the FIP, SDA, CDC or FAP overissuance on the Benefit Recovery System (BRS).
- Refer to OIG for investigation if IPV is suspected. [and]
- Send a DHS-4701A, Overissuance Referral Disposition, to the specialist explaining the final disposition.

[For agency error overissuances, MDHHS] must request the hearing on a closed case. BAM 705 (July 2014), p. 11. A hearing request on a DHS-4358D for a closed case requires the Recoupment Specialist to request a debt collection hearing, regardless of the total overissuance amount. *Id.* [MDHHS is to] complete a DHS-3050 indicating the hearing is for a debt collection issue. *Id.* [MDHHS is to] forward the DHS-4358A, -B, -C, and -D, DHS-3050 and all exhibits to MAHS. *Id.* See BAM 725 regarding evidence and debt collection hearing procedures. *Id.* A functionally equivalent policy applies for overissuances caused by client error (see BAM 715 (July 2014), p. 12).

MDHHS testimony indicated a debt collection hearing was pursued because Respondent was not an active benefit recipient. The MDHHS testimony was credible and un rebutted.

The MDHHS case summary alleged Respondent requested a hearing more than 90 days after MDHHS mailed Respondent a Notice of Overissuance; for purposes of this decision, the MDHHS allegation will be accepted as accurate. MDHHS contended Respondent's hearing request should then be dismissed, and presumably, a debt against Respondent would be automatically established.

MDHHS policy is somewhat inconsistent concerning debt collection procedures. MDHHS policy chapters on overissuances (BAM 705 and BAM 715) require MDHHS to request a debt collection hearing before a debt can be established against an inactive

recipient. These policies suggest when (or whether) a Respondent submits a hearing is immaterial to the debt collection hearing process because MDHHS is requesting the hearing. Debt collection policy muddles the analysis.

MDHHS requests a debt collection hearing when the grantee of an inactive program requests a hearing after receiving the DHS-4358B, Agency and Client Error Information and Repayment Agreement. BAM 725 (October 2015), pp. 16-17. Active recipients are afforded their hearing rights automatically, but MDHHS must request hearings when the program is inactive; see BAM 705 or 715, HEARING REQUESTED, Inactive Cases. *Id.*, p. 17.

BAM 725 first suggests MDHHS debt collection hearings are triggered by an inactive client's hearing request. The policy then proceeds to contradict this suggestion by stating MDHHS must request hearings for inactive clients.

Generally, inconsistent policy is interpreted unfavorably against the agency drafting the inconsistency. This generality is apt for the present case. It is found Respondent has no requirement to request a hearing to dispute debt collection actions. Accordingly, it is found MDHHS may not establish a debt against Respondent based on a Respondent's hearing request submission date. The analysis will proceed to determine if MDHHS presented sufficient evidence to establish a debt against Respondent.

Overissuances may be pursued if they are client caused or agency caused. [For FAP benefits,] client and Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700 (October 2015), p. 9.

The overissuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months before the date it was referred to the RS, whichever is later. *Id.*, p. 4. The amount of the overissuance is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. *Id.*, p. 6. If improper reporting or budgeting of income caused the overissuance, [MDHHS is to] use actual income for that income source. *Id.*, p. 9. For client error overissuances due, at least in part, to failure to report earnings, [MDHHS is to] not allow the 20 percent earned income deduction on the unreported earnings. *Id.*, p. 8.

MDHHS alleged Respondent failed to timely report the commencement of his and his child's RSDI benefits. MDHHS presented SOLQs for Respondent and Respondent child to support the allegation. An SOLQ is a document obtained from a data exchange with SSA.

MDHHS presented Respondent's SOLQ (Exhibit 1, p. 45-47) dated [REDACTED]. Respondent's "Net Monthly Benefit" was stated to be \$1,349. A "Date of Initial Entitlement" of [REDACTED] was listed.

MDHHS presented Respondent's son's SOLQ (Exhibit 1, p. 48-50) dated [REDACTED]. Respondent's son's "Net Monthly Benefit" was stated to be \$674. A "Date of Initial Entitlement" of [REDACTED] was listed.

MDHHS presented FAP- EDG Net Income Results and FAP Excess Shelter Deduction documents (Exhibit 1, pp. 56-58). The documents reflect Respondent's FAP budget from February 2010. The budget listed \$0 income resulting in a FAP issuance of \$367.

It was curious why MDHHS submitted a FAP budget from February 2010 when MDHHS is alleging an overissuance of FAP benefits for later months. MDHHS testimony indicated the budget mirrors Respondent's FAP budgets from April 2010 through September 2010. MDHHS testimony was consistent with Respondent's FAP benefit issuance history (Exhibit 1, pp. 61-62) which verified \$367 FAP issuances for each month from April 2010 through September 2010.

MDHHS presented FAP overissuance budgets (Exhibit 1, pp. 64-75) dated [REDACTED] for the benefit months from April 2010 through September 2010. The FAP budgets included Respondent's and his son's previously unbudgeted RSDI benefit. The budgets verified Respondent would have received \$16 in FAP benefits had MDHHS budgeted petitioner's and his son's RSDI benefits.

MDHHS split the alleged overissuance period between April 2010 through July 2010 and August 2010 through September 2010. The reason for splitting the period was because MDHHS alleged the first overissuance was caused by Respondent's failure to report income. The second overissuance period was caused by MDHHS' failure to budget reported income.

For purposes of this decision, it need not be considered which period was Respondent's or MDHHS' fault. Even if the entire over-issuance was caused by MDHHS, the over-issuance exceeds the \$250 minimum threshold required for agency error collections.

Presented evidence sufficiently verified Respondent's FAP group received \$2,202 in FAP benefits from April 2010 through September 2010. Presented evidence also sufficiently verified Respondent's FAP group should have received \$96 in FAP benefits over the same timeframe. It is found MDHHS established a debt against Respondent for \$2,106.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a debt against Respondent for \$2,106 based on an overissuance of FAP benefits for the period from April 2010 through September 2010. The actions taken by MDHHS are **AFFIRMED**.

*Christian Gardocki*

CG/hw

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**Christian Gardocki**  
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]

**Respondent**

[REDACTED]