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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: May 5, 2016
MAHS Docket No.: 15-013731
Agency No.: [REDACTED]
Petitioner: Department of Health and Human
Services
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 Lansing, Michigan. The Department was represented by [REDACTED], Recoupment Specialist. [REDACTED], Eligibility Specialist, appeared as a witness for the Department. [REDACTED], the Respondent, appeared on her own behalf. [REDACTED], boyfriend, appeared as a witness for the Respondent.

During the hearing proceedings, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-65. The additional documentation the Michigan Administrative Hearing System received from Respondent was admitted as Exhibit 1, pp. 1-28, however, it was noted that the Department had not had an opportunity to review this documentation because a copy was not provided to the Department prior to the hearing proceedings.

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 a recipient of FAP benefits from the Department.
2. The Department alleges Respondent received a FAP OI during the period March 1, 2012, through February 28, 2014, due to the Department's error.
3. The Department failed to timely request income verification for reported self-employment.
4. The Department then failed to include the self-employment income in the FAP budgets when the requested verification was provided.
5. The Department alleges that Respondent received \$ [REDACTED] OI that is still due and owing to the Department.

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, DHS must attempt to recoup the overissuance (OI). An overissuance (OI) is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold). BAM 700, (May 1, 2014), p 1.

An agency error OI is caused by incorrect action (including delayed or no action) by DHS staff or DIT staff or department processes. If unable to identify the type of OI, the Department records it as an agency error. BAM 700, p 4.

A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p 6.

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of necessary forms. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, (December 1, 2011), p.5.

A client must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. This includes changes with income. BAM 105, p.7.

Client and Agency error OIs are not pursued if the estimated OI amount is less than \$250 per program. BAM 700, p 9.

Here, the Department contends that Respondent received an OI of FAP benefits due to the Department's error. (Recoupment Specialist Testimony) It was explained that the Department failed to timely request income verification for reported self-employment. (Recoupment Specialist Testimony; Exhibit A, p. 56) The Department then failed to include the self-employment income in the FAP budgets when the requested verification was provided. Respondent received a total of \$ [REDACTED] in FAP benefits during the period of March 1, 2012, through February 28, 2014. When all of the verified income for the FAP group is budgeted for that period, Respondent was only eligible for \$ [REDACTED] in FAP benefits. Accordingly, Respondent received a \$ [REDACTED] OI in FAP benefits for the period of March 1, 2012, through February 28, 2014. (Recoupment Specialist Testimony; Exhibit A, pp. 7-38)

Respondent and her boyfriend explained that when they first applied for FAP in February 2012, they had gone through a bankruptcy filed in late 2011. Further, Respondent's boyfriend was off work for a few months the time of the application. Accordingly, the application was filled out that there was self-employment but no income was listed because he was not working at that time. Additionally, Respondent's boyfriend testified that they submitted the requested tax documentation to verify income and explained there was a bit of a delay each year. The FAP case was always up for review in February or March, when they were still gathering the documentation to prepare the tax returns for filing in April. Accordingly, a profit/loss statement was prepared for the first few months of at least one year in order to provide the Department worker with some verification in the timeframe requested because the tax return for the prior year was not yet available. (Respondent and Boyfriend Testimony; Exhibit B)

This Administrative Law Judge has carefully considered the testimony and other evidence in the record. As noted above, the Department determined the FAP OI was due to the Department's error. When the income for Respondent's FAP group was corrected in the budgets, the difference between the benefit amounts Respondent received and the benefit amounts Respondent was entitled to receive totals \$ [REDACTED]. Pursuant to BAM 700, recoupment is pursued for OIs greater than \$250.00. Accordingly, the Department properly pursued Respondent's FAP benefit OI of \$ [REDACTED], which resulted from the Department's failure to timely verify income and incorrect income budgeting.

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 Respondent totaling \$ [REDACTED], which was due to the Department's error.

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

The Department is ORDERED to initiate collection procedures for a \$ [REDACTED] OI of FAP benefits in accordance with Department policy.

CL/mc



Colleen Lack
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]

Respondent

[REDACTED]