



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: July 22, 2016  
MAHS Docket No.: 15-012500  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

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

### **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, an In-person hearing was held on, from Muskegon, Michigan. The Department was represented by Assistant Attorney General, [REDACTED] and [REDACTED], Recoupment Specialist. The Petitioner, Michael Budreau appeared and was represented by his Attorney, [REDACTED] of [REDACTED].

### **PROCEDURAL HISTORY**

The matter was originally scheduled to be heard on April 14, 2016. On April 7, 2016, the Michigan Administrative Hearing System (MAHS) received the parties' joint stipulation to adjourn the hearing for an in-person hearing and use the scheduled hearing date of April 14, 2016 for a pre-hearing conference. On April 12, 2016 supervising Administrative Law Judge Manager, Marya Nelson-Davis issued an Adjournment Order for In-Person Hearing and ordered the hearing to be rescheduled with notice provided to parties in accordance with applicable law and policy. The hearing was then scheduled for May 26, 2016 at 1:00 p.m. The issue of converting the hearing to a pre-hearing was not addressed until after the Undersigned Administrative Law Judge looked at the file just prior to the scheduled hearing. At that point in time, the Administrative Law Judge had her secretary contact the party's Attorneys to inform them that the motion/stipulation to convert the hearing to a pre-hearing was granted.

The pre-hearing commenced as scheduled on May 26, 2016 at 1:30 pm. Present for the Petitioner was the Petitioner, [REDACTED] and his Attorney, [REDACTED] of [REDACTED]. Present for the Department was Assistant Attorney General, [REDACTED]. The hearing was rescheduled for June 23, 2016 at 1 PM

and commenced as rescheduled. The parties requested briefs and the Petitioner's Attorney was given until July 1, 2016 to submit a brief and the Departments Assistant Attorney General was given until July 8, 2016 to submit a reply brief. Both briefs were received by their due dates.

The following exhibits were offered and admitted into evidence:

Department: A--May 17, 2011, Redetermination.

B--April 18, 2012, Wage Match Client Notice and accompanying paystubs.

C--May 9, 2012, employment verification.

D--October 1, 2011 to June 6, 2012, Benefit Summary Inquiry.

E--May 7, 2015, Overissuance budget, claim details, Notice of Overissuance, Overissuance Summary, Department and Client Error Information and Repayments Agreement, mailing instructions and Hearing Request for Overissuance or Recoupment Action.

F--April 25, 2013, Assistance Application.

G--Unemployment Insurance Agency and Bridges UCB verification.

H--January 21, 2015, RSDI verification.

I--September 2, 2013, Semiannual Contact Report.

J-- November 17, 2013, Application for State Emergency Relief.

K--January 14, 2014, Change Report.

L-- March 11, 2014, Redetermination.

M--October 14, 2014 Social Security Administration award letter.

N-- January 21, 2015, SOLQ Report.

O--Bridges Benefit Summary Inquiry.

P-- June, 2013-April, 2014, Over issuance budgets and summary.

Q--May 7, 2015, Overissuance budgets, claim details, Notice of Overissuance, Overissuance Summary, Department and Client Error Information and Repayments Agreement, mailing instructions and Hearing Request for Overissuance or Recoupment Action.

Petitioner: None.

### **ISSUE**

Did Petitioner receive over-issuances (OI) of the Food Assistance Program (FAP) from December 1, 2011 to April 30, 2012 and from June 1, 2013 to April 30, 2014 that the Department is entitled to recoup/collect?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner was a recipient of FAP benefits from the Department.
2. The Department alleges the Petitioner received a FAP OI during the period of December 1, 2011 to April 30, 2012, due to Petitioner's error because of his failure to report earned income within 10 days of the start date.
3. The Department alleges the Petitioner received a FAP OI during the period of June 1, 2013 to April 30, 2014, due to Petitioner's error because of his failure to report unemployment income and his and his wife's RSDI income.
4. The Department alleges that the Petitioner received an \$ [REDACTED] FAP OI that is still due and owing to the Department, for the December 1, 2011 to April 30, 2012 OI.
5. The Department alleges that the Petitioner received a \$ [REDACTED] FAP OI that is still due and owing to the Department, for the June 1, 2013 to April 30, 2014 OI.
6. On May 7, 2015, the Department sent the Petitioner a Notice of Overissuances informing the Petitioner that the Department has determined that he has received two OIs of the FAP in the amount of \$ [REDACTED] and \$ [REDACTED] that the Department is entitled to recoup/collect.
7. On July 1, 2015, the Department sent the Petitioner a Notice of Balance Due, informing the Petitioner that he is required to pay a total amount of \$ [REDACTED] and that his failure to pay at least \$ [REDACTED] per month could result in garnishing or levying his salary or wages, seizing money he may have on deposit in financial institutions and/or seizing his income tax refund and applying it to the debt.
8. On July 16, 2015, the Department received the Petitioner's written hearing request protesting the Department's actions.

### **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.

### **December 1, 2011 to April 30, 2012 OI**

At the time of OI, Bridges Administrative Manual (BAM) 700 (2011) p. 1 provided that, when a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. The discovery date of the OI is determined by the recoupment specialist for a client or agency error. This is the date that the OI is known to exist and there is evidence available to determine the OI type.

BAM 700 (2011) p. 3, provides that there are three types of OIs; Intentional Program Violation, agency error and client error. An agency error OI is caused by incorrect action (including delayed or no action) by DHS or DIT 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 (services staff, Work First! agencies, etc.).
- Data exchange reports were not acted upon timely (wage match, new hires, BENDEX, etc.).

If unable to identify the type of OI, record it as an agency error. BAM 700 (2011) p. 3; BAM 705 (2011) p. 1.

BAM 700 (2011) p. 5; BAM 715 (2011) p. 1, provides that 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 (2011) p. 6, provides that a suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination.
- The client was clearly instructed regarding his or her reporting responsibilities.
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his reporting responsibilities.

IPV is suspected when there is clear and convincing evidence that the client has **intentionally** withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

BAM 700 (2011) pp. 7, 8, provides that the Department's worker, upon discovery of a potential OI, must:

- Take immediate action to correct the current benefits
- Obtain initial evidence that an OI potentially exists.
- Determine if the OI was caused by department, provider or client actions.
- Refer any OIs needing referral to the RS within **60 days** of suspecting an OI exists.

Within **60 days** of suspecting an OI exists, the Department's worker must complete a DHS-4701, Overissuance Referral, and refer the following OIs to the RS:

- • All client and agency errors over \$125.
- • All suspected IPV errors.
- • All CDC provider errors.

BAM 700 (2011) p. 9 provides that, the Recoupment Specialist, within 60 days of receiving the referral, must determine if an OI actually occurred and determine the type of the OI. Within 90 days of determining an OI occurred, the Recoupment Specialist must:

- Obtain all evidence needed to establish an overissuance.
- Calculate the OI amount.
- Send a DHS-4358A, B, C & D to the client.
- Enter the program OIs on BRS.
- Refer all suspected IPV overissuances to OIG for investigation.
- Send a DHS-4701A, Overissuance Referral Disposition, to the specialist explaining the final disposition of the OI.

In addition to processing OI referrals, RS are responsible for other duties related to recoupment and collections, such as:

- Entering, changing or correcting an OI on BRS.
- Transferring OIs to other case numbers.
- Handling recoupment issues on closed cases.
- Assisting local fiscal units and reconciliation and recoupment staff in central office as needed with collection activities.

BAM 715 (2011) p. 6, provides that for client error OIs 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.

7 CFR 273.18. provides that, "[I]f .... The claim is delinquent for three years or more.... Then you must terminate and write off the claimant was you plan to continue to pursue the claim through Treasury's Offset Program." Seven CFR 273.18.(e) (8) (ii).

In this case, the Petitioner's Attorney argued that the Department's failure to timely adhere to the processing timelines set forth in the policy has prejudiced the Petitioner. The Petitioner's Attorney argues that the Department had information by at least May 9, 2012 that there was a potential OI of FAP benefits. The Petitioner's Attorney argued that the Department waited more than three years before taking any action on that information in violation of the departmental policy. The Petitioner's Attorney also argues, because the claim is so old, that the federal regulations require that the claim be terminated. The Assistant Attorney General argues that the claim should not be terminated because it is being pursued through the Treasury's Offset Program.

Department's Exhibit B indicates that a wage match was mailed to the Petitioner on April 18, 2012 and received back in the local office by April 27, 2012. It is not contested that the Department failed to notify the Petitioner of any potential OI until May 7, 2015. The evidence clearly establishes that the Department did not act within the timelines set forth by departmental policy when processing this OI. Though the Department may not have acted within the timelines set forth by departmental policy when processing the OI, the Department did take immediate action to rectify the OI upon discovery of the OI by issuing a wage match to the Petitioner and making the necessary adjustments in the budget. The OI was not permitted to continue due to any agency error. Therefore, as the OI was not permitted to continue after its discovery, the OI remains a client error because it is the result of the Petitioner's failure to timely report his earned income. As such, the Petitioner is not entitled to the 20% earned income deduction that would otherwise be afforded to him in his OI budgets if it were an agency error. Therefore, this Administrative Law Judge concludes that the Department has met its burden of proving that the Petitioner received an OI of \$ [REDACTED] that the Department is entitled to recoup/collect.

The Petitioner's Attorney also asserts that the Petitioner was prejudiced by the Department's delay in processing this first OI. The Petitioner's Attorney asserts that had the OI been processed within the timelines set forth by departmental policy, the OI could have been recouped from the Petitioner's benefits later received in 2013 and 2014. This was not contested during the hearing and while it may be true, this Administrative Law Judge knows of no remedy within the departmental policy or the federal regulations that the Petitioner would be entitled to due to the Department's delay in processing the OI. As such, this Administrative Law Judge concludes that the Department was not acting in accordance with its departmental policy when exceeding the timelines set forth in the policy when processing this first OI; however, the Department did properly determine that the Petitioner received an OI of \$ [REDACTED] that the Department is entitled to recoup/collect.

#### **June 1, 2013 to April 30, 2014 OI**

At the time of OI, Bridges Administrative Manual (BAM) 700 (2013) p. 1 provided that, when a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. An OI is the amount of benefits issued to the client group in

excess of what they were eligible to receive. The discovery date of the OI is the date Bridges automatically inserts when there is an OI and a referral is made to the Recoupment Specialist (RS) for a client or agency error. The RS determines the discovery date for manual claims and it is the date the OI is known to exist and there is evidence available to determine the OI type. For an intentional program violation (IPV) the Office of Inspector General (OIG) determines the discovery date. This is the date the referral was sent to the prosecutor or the date that OIG requested an administrative disqualification hearing.

BAM 700 (2013) p. 3, provides that there are three types of OIs; Intentional Program Violation, agency error and client error. An agency error OI is caused by incorrect action (including delayed or no action) by DHS or DIT 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 (services staff, Work First! agencies, etc.).
- Data exchange reports were not acted upon timely (wage match, new hires, BENDEX, etc.).

If unable to identify the type of OI, record it as an agency error. BAM 700 (2013) p. 3; BAM 705 (2013) p. 1.

BAM 700 (2013) p. 5; BAM 715 (2013) p. 1, provides that 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 (2013) p. 6, provides that a suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination.
- The client was clearly instructed regarding his or her reporting responsibilities.
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his reporting responsibilities.

IPV is suspected when there is clear and convincing evidence that the client has **intentionally** withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility.

BAM 700 (2013) pp. 7, 8, provides that the Department's worker, upon discovery of a potential OI, must:

- Take immediate action to correct the current benefits.
- Obtain initial evidence that an OI potentially exists.
- Determine if the OI was caused by department, provider or client actions.
- Refer any OIs needing referral to the RS within **60 days** of suspecting an OI exists.

Within **60 days** of suspecting an OI exists, the Department's worker must complete a DHS-4701, Overissuance Referral, and refer the following OIs to the RS:

- • All client and agency errors over \$250.
- • All suspected IPV errors.
- • All CDC provider errors.

BAM 700 (2013) p. 9 provides that, the Recoupment Specialist, within 60 days of receiving the referral, must determine if an OI actually occurred and determine the type of the OI. Within 90 days of determining an OI occurred, the Recoupment Specialist must:

- Obtain all evidence needed to establish an overissuance.
- Calculate the OI amount.
- Send a DHS-4358A, B, C & D to the client.
- Enter the program OIs on BRS.
- Refer all suspected IPV overissuances to OIG for investigation.
- Send a DHS-4701A, Overissuance Referral Disposition, to the specialist explaining the final disposition of the OI.

In addition to processing OI referrals, RS are responsible for other duties related to recoupment and collections, such as:

- Entering, changing or correcting an OI on BRS.
- Transferring OIs to other case numbers.
- Handling recoupment issues on closed cases.
- Assisting local fiscal units and reconciliation and recoupment staff in central office as needed with collection activities.

BAM 715 (2013) p. 6, provides that for client error OIs 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.

The Petitioner's Attorney argues that the second OI is the result of an agency error for failing to timely take action. The Petitioner's Attorney indicates that the Department's Exhibit G indicates that the Petitioner was entitled to receive unemployment benefits beginning April 14, 2013. The Petitioner delivered verification of this to the Department on May 1, 2013. Department's Exhibits G indicates that the income was reported May 1, 2013, but not budgeted until January, 2014. The Petitioner's Attorney is correct in his assertion that the exhibits in evidence indicate that the UCB income was reported by



May 1, 2013, that the Petitioner's wife's RSDI was reported by November 21, 2013 and that the Petitioner's RSDI was reported by April 30, 2014. These facts were not contested by the Assistant Attorney General during the hearing. The Assistant Attorney General argued that this was unearned income and as such, no 20% earned income deduction would have been afforded to the Petitioner regardless and the amount of the OI would not change.

The Administrative Law Judge concludes that this OI was a result of agency error, as it was clearly reported to the Department by May 1, 2013 and the Department did not act on the information until January, 2014. The Administrative Law Judge also concludes that the Department has met its burden of proving that the Petitioner received an OI of \$ [REDACTED] that the Department is entitled to recoup/collect.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish two FAP benefit OIs to the Petitioner totaling \$ [REDACTED]

#### **DECISION AND ORDER**

Accordingly, the Department is **AFFIRMED**.



SH/nr

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Susanne E. Harris  
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]

**Counsel for Petitioner**

[REDACTED]

**Counsel for Petitioner**

[REDACTED]

**Petitioner**

[REDACTED]