



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: September 29, 2016
MAHS Docket No.: 16-011423
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 [REDACTED] 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 but did not provide any testimony.

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. Exhibit A, pp. 10-12.
2. On [REDACTED], the Department sent Respondent a Notice of Overissuance (OI notice) informing her of an FAP OI for the period of [REDACTED], due to agency error. Exhibit A, pp. 3-7. The OI notice also indicated that the OI balance was \$ [REDACTED] because the agency did not use her earned income from her employer. Exhibit A, p. 3.

3. On [REDACTED], Respondent filed a hearing request, protesting the Department's action. Exhibit A, p. 2.

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 they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (January 2016), 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 705 (January 2016), p. 6.

An agency error is caused by incorrect actions (including delayed or no action) by the Michigan Department of Health and Human Services (MDHHS) staff or department processes. BAM 705, p. 1. 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 (Wage Match, New Hires, BENDEX, etc.).

BAM 705, p. 1. If unable to identify the type of overissuance, record it as an agency error. BAM 705, p. 1.

In this case, the Department alleges that Respondent received an OI for her FAP benefits (agency error) because the Department failed to budget her earned income.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (July 2015), p. 10. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 10.

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. 11.

First, the Department testified that it did not complete Respondent's FAP certification in its system (Bridges), which included her earned income with Preferred Building Services that was reported on [REDACTED]. See Exhibit A, p. 1, (Hearing Summary). The Department testified that its failure to act resulted in an FAP OI for the period of [REDACTED], thus, categorized as an agency error. See Exhibit A, p. 1, (Hearing Summary).

Second, the Department presented verification of Respondent's employment income; however, only provided check stubs for the following pay dates: (i) [REDACTED]; (ii) [REDACTED] and (iii) [REDACTED]. Exhibit A, pp. 13-15. The Department failed to provide any other verification of Respondent's actual earnings throughout the alleged OI period.

Third, the Department did present other documentation, including a "Claim Detail" screen; a "Claim Search" screen; Verification of Employment forms, but not completed; and her online application dated [REDACTED]. See Exhibit A, pp. 8-9, 16-18; and 34-66.

Fourth, the Department presented OI budgets for the period of [REDACTED]. Exhibit A, pp. 19-28. The purpose of the OI budgets is it to show how the Department calculated the overpayment amount. See BAM 705, p. 6. However, after a thorough review of the FAP budgets presented, the Department miscalculated the OI amount.

Policy states if improper budgeting of income caused the overissuance, use actual income for the past overissuance month for that income source. BAM 705, p. 8. The Department converts income received weekly or every other week to a monthly amount. BAM 705, p. 8. The Department will automatically convert based on answers to on-screen questions. BAM 705, p. 8. Exception, for FAP only, income is not converted from a wage match for any type of overissuance. BAM 705, p. 8. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 705, p. 8.

In the present case, the Department did not use Respondent's actual income received to calculate the OI as required per policy. See BAM 705, p. 8. Each OI month, the Department calculated her total gross earned income to be \$ [REDACTED]. See Exhibit A, pp. 19-28. However, the Department presented three of Respondent's paystubs that showed her gross income fluctuates, i.e., gross pay for [REDACTED], was \$ [REDACTED] and gross pay for [REDACTED], was \$ [REDACTED]. Exhibit A, pp. 13-15. Thus, it is not possible that Respondent's actual income could have consistently been \$ [REDACTED] each month during the entire alleged OI period, when her income fluctuates as shown above.

Based on the foregoing information, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it failed to establish an OI for FAP benefits. The Department failed to provide sufficient verifications to show the actual income Respondent received for each overissuance month (i.e., payroll stubs) in order to show the budgets were properly calculated. 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 FAP benefits. See BAM 700, p. 1, and BAM 705, pp. 6 and 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 an FAP benefit OI to Respondent totaling \$ [REDACTED] for the period of [REDACTED].

Accordingly, the Department is **REVERSED**.

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

EJF/jaf



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]

Respondent

[REDACTED]

Via email

[REDACTED]