



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: October 12, 2016
MAHS Docket No.: 16-007964
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED] Recoupment Specialist. The Respondent was represented by herself.

ISSUE

Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) based upon Agency Error?

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 Respondent applied for FAP benefits on [REDACTED], as a group of three persons. Based upon the application, the Respondent was advised that she was determined to be a simplified reporter based upon her FAP group income. The Department issued a Notice of Case Action dated [REDACTED], providing the Respondent FAP benefits in the amount of \$ [REDACTED] per month. Exhibits 10 and 11.
3. The Respondent was scheduled for a Semi-Annual review, which was sent to the Respondent on [REDACTED], to be completed in December 2013. The

Department was unable to locate the Respondent's semi-annual report. The Department acknowledged that it made an error and either stopped the earned income previously included even though the Petitioner's husband was still employed and receiving earned income, or entered the incorrect amount. Once the Department stopped the income, the Petitioner became a change reporter. Exhibits 8 and 9.

4. The Petitioner's husband began employment with Chrysler on [REDACTED]; but this income was not considered when the FAP benefits were calculated.
5. The Department alleges Respondent received an FAP OI during the period [REDACTED], due to **Department's** error.
6. The Department alleges that Respondent received \$ [REDACTED] OI that is still due and owing to the Department. Exhibit 1, pp. 1-2, and Exhibit 3, p. 7.

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.

Additionally, in this case the Department seeks to recoup FAP benefits issued to the Respondent, which it alleges the Respondent was not eligible to receive due to income from her husband's employment which was not timely reported by the Respondent. The Department alleges that Respondent's failure to report the earned income resulted in an OI of FAP benefits in the amount of \$ [REDACTED] for the period [REDACTED]. Exhibit 1, p. 1. Exhibit 3.

The Department conceded Agency Error as it either incorrectly stopped income or did not enter the right income as the Respondent became a change reporter indicating the group had no income. 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. Some examples are:

- Available information was not used or was used incorrectly. BAM 715 (January 1, 2016), p. 1.

Department policy states that DHHS 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 (July 2014), pp. 16-17. Active recipients are afforded their hearing rights automatically, but DHHS must request hearings when the program is inactive. BAM 725, p. 17 and see also BAM 715 (July 2014), pp. 11-12.

The overissuance amount is the benefit amount the group or provider actually received minus the amount the group was eligible to receive in order to establish a client overissuance the amount must be more than \$ [REDACTED] BAM 715 (January 1, 2016), p. 6.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 1, 2016 p. 11-12. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11.

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.

Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 11-12. These include, but are not limited to, changes in daycare needs or providers. BAM 105, pp. 7-8.

The Respondent's spouse began employment with [REDACTED] on [REDACTED].

The Department presented OI budgets for the period [REDACTED]. The unreported income was determined based upon the Work Number for the periods [REDACTED] based on weekly pays for the period. Exhibit 12, pp. 19-23. The budgets for these months as presented are correct. However, because the Department used Wage Match to determine [REDACTED] and [REDACTED] OI, it is not entitled to recoup the OI for [REDACTED] or [REDACTED] in the amount of \$ [REDACTED] for each month for a total of \$ [REDACTED] Exhibit 1, pp. 10-11. For both these months, the unreported income was determined based upon a Wage Match.

For the months of [REDACTED] and [REDACTED], the Department budgeted Respondent's income by taking the monthly average from the Respondent's spouse's quarterly earnings after subtracting actual wages for [REDACTED]. Exhibit 4, p. 18.

Policy states if improper reporting or budgeting of income caused the overissuance, the Department **uses actual income** for the overissuance month for that income source. BAM 720, p. 10; BAM 700 (July 1, 2013), p. 7. The Department converts all income to a monthly amount. BAM 720, p. 10. BAM 700, p. 7. Exception, for FAP only, do not convert the average monthly income reported on a wage match. BAM 720, p. 10; BAM 700, p. 7. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 720, p. 10; BAM 700, p. 7.

Based on the above policy, the Department is unable to use Respondent's average monthly income as a method in determining the FAP groups' budgetable income for the [REDACTED] and [REDACTED] OI months as it is not actual income for those months. The evidence fails to provide the actual income Respondent received each OI month because it relied on information which was not actual pay but was based upon reported quarterly earnings. See Exhibit 3. The Department failed to provide any other verifications to show the actual income Respondent received for [REDACTED] and [REDACTED] OI months (i.e., payroll stubs). Because the Department failed to establish that it properly budgeted Respondent's income in the OI budget for [REDACTED] and [REDACTED], the Department did not satisfy its burden of showing that Respondent received an OI for FAP benefits for those months. Thus, it is not entitled to recoup the OI for [REDACTED] in the amount of \$ [REDACTED] and is not entitled to recoup the OI for [REDACTED] in the amount of \$ [REDACTED] for a total of \$ [REDACTED] which may not be recouped. Exhibit 3, p. 10 and Exhibit 12. See BAM 700, p. 1, and BAM 720, pp. 1, 8, and 10. The other months of OI, [REDACTED], were calculated based upon actual pay amounts, and thus, are valid as presented.

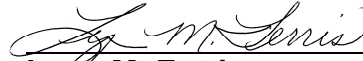
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish an FAP benefit OI to Respondent totaling \$ [REDACTED]

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED IN PART** with respect to the OI amount for the months of [REDACTED] in the amount of \$ [REDACTED] and **REVERSED IN PART** with respect to the OI amount for the months of [REDACTED] and [REDACTED] in the amount of \$ [REDACTED] which it has been determined the Department is not entitled to recoup.

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

LMF/jaf



Lynn M. Ferris

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]