



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 10, 2016
MAHS Docket No.: 16-011367
Agency No.: [REDACTED]
Petitioner:
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 three-way telephone conference hearing was held on September 29, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Recoupment Specialist (RS). [REDACTED] (Respondent) represented herself.

The Department offered the following items which were admitted into evidence as **Exhibit 1:** Hearing Summary (page 1), Bridges Claim Adjustment Search Criteria (page 2), Hearing Request for Overissuance or Recoupment Action (page 3), Notice of Overissuance (page 4), Overissuance Summary (page 5), Department and Client Error Information and Repayment Agreement (page 6), Mailing Instructions (page 7), Hearing Request for Overissuance or Recoupment Action (page 8), Bridges Claim Search (page 9), Issuance Summary (page 10), Issuance Summary-incorrect (page 11), FAP OI/UI Budgets (pages 12-39), Bridges Eligibility Summary (page 40), Bridges Benefit Summary Inquiry (pages 41-42), Bridges Eligibility Summary (pages 43-45), DHS/SSA Referral (pages 46-47), RSDI Payment History (pages 48-49), The Work Number-Walmart (pages 50-53), Redetermination (pages 54-59) and Overissuance Referral (page 60).

ISSUE

Did the Respondent receive an overissuance (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 past recipient of FAP benefits from the Department.
2. Respondent is inactive for FAP. [Exhibit 1, p. 45].
3. The Department alleges Respondent received an OI of FAP benefits during the period January 1, 2015, through January 31, 2016, due to the Department's error. [Exh. 1, pp. 4-5].
4. The Department contends that the alleged FAP OI was discovered on February 23, 2016, during a mid-certification check of Respondent's FAP case. [Exh. 1, p. 60].
5. The Department alleges that Respondent received a \$ [REDACTED] FAP OI that is still due and owing to the Department. [Exh. 1, pp. 4-5].
6. On July 22, 2016, the Department mailed Respondent a Notice of Overissuance (DHS-4358-A), Overissuance Summary (DHS-4358-B), and Department and Client Error Information and Repayment Agreement (DHS-4358-C). [Exh. 1, pp. 4-6].
7. On August 2, 2016, Respondent returned a completed Hearing Request for Overissuance or Recoupment Action (DHS-4358-D) form, which contained a request for hearing to dispute the proposed action. [Exh. 1, p. 3].
8. On August 15, 2016, the Department forwarded the matter to the Michigan Administrative Hearing System (MAHS).
9. On September 16, 2016, the MAHS issued a Notice of Debt Collection Hearing to all interested parties which scheduled a telephone hearing for September 29, 2016.
10. The telephone hearing occurred on September 16, 2016, as scheduled.
11. Respondent did receive an OI of FAP benefits in the amount of \$ [REDACTED] issued by the Department.
12. The FAP OI was due to an agency error.
13. The OI period was from January 1, 2015, to January 31, 2016.

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, MDHHS must attempt to recoup the overissuance. BAM 700 (1-1-2016), p. 1. An **overissuance** is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700, p. 1. [Emphasis in original]. **Recoupment** is a MDHHS action to identify and recover a benefit overissuance. BAM 700, p. 2. [Emphasis in original].

BAM 700 indicates that the three types of overissuances are agency error, client error and CDC provider error. BAM 700, pp. 4-8. An **agency error** is caused by incorrect action (including delayed or no action) by MDHHS staff or department processes. BAM 700, p. 4. [Emphasis added]. For FIP, SDA, CDC and FAP, agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 5. A **client error** 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. [Emphasis added]. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, **and any of the following occurred:** (1) the hearing request is later withdrawn; (2) MAHS denies the hearing request; (3) the client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed; and (4) the hearing decision upholds the department's actions. BAM 700, p. 6. [Emphasis in original]. A CDC **provider error** is an unintentional or inadvertent error made by the provider who reported incorrect information or failed to report information to the department. BAM 700, p. 7. [Emphasis in original].

Recoupment policies and procedures vary by program and overissuance type. BAM 705 (1-1-2016) explains agency error processing and establishment. For FIP, SDA, CDC and FAP, the overissuance period begins the first month (or first pay period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the RS, whichever 12-month period is later. BAM 705, p. 5.

The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705, p. 6. The amount of EBT benefits received in the calculation is the **gross** (before automated recoupment (AR) deductions) amount issued for the benefit month. BAM 705, p. 7. [Emphasis in original].

For purposes of FAP, if improper budgeting of income caused the overissuance, use actual income for the past overissuance month for that income source. Convert income received weekly or every other week to a monthly amount. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 705, p. 8.

BAM 725 (10-1-2015) governs collection actions and explains repayment responsibility, Benefit Recovery System data management, and the various collection processes used by MDHHS.

For all programs, repayment of an overissuance is the responsibility of: (1) anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred; and (2) a FAP-authorized representative if they had any part in creating the FAP overissuance. BAM 725, p. 1.

The rules for active and inactive programs are different. All cases that contain an adult member from the original overissuance group and are **active** for the program in which the overissuance occurred are liable for the overissuance and subject to administrative recoupment. BAM 725, p. 3. [Emphasis added]. Overissuances on **inactive** programs are recouped through cash repayment processes. Collection notices are sent to the household on the inactive case. BAM 725, p. 3. [Emphasis added].

For FIP, SDA, CDC, MA and FAP, 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. Active recipients are afforded their hearing rights automatically, but MDHHS must request hearings when the program is inactive.

In this matter, the Department RS testified that Respondent received an OI of FAP benefits after it was discovered that the Department failed to properly record that she began working and was receiving earned income from her job at Walmart. As a result of the Department's failure to record this income, the Department RS contends that Respondent received an OI of FAP benefits. Respondent did not dispute the Department's determination that she received a FAP OI or the amount, but she stated that her caseworker failed to properly do her job.

The Administrative Law Judge carefully considered and weighed the testimony and other evidence in the record.

In this case, the material, competent and substantial evidence on the whole record shows that Respondent received an OI of FAP benefits in the amount of \$ [REDACTED] due to an agency error. The record shows that on December 3, 2014, the Department

received Respondent's completed redetermination form, which shows that Respondent properly reported, among other things, that she was employed at [REDACTED] and earned \$ [REDACTED] in earned income. [Exh. 1, p. 57]. Respondent's earned income was obtained from the Work Number. [Exh. 1, pp. 50-53]. The record contains Bridges Eligibility Summary reports that showed Respondent received \$ [REDACTED] during the OI period (January 1, 2015, to January 31, 2016). [Exh. 1, pp. 40-44]. It should be noted that the Department's OI summary incorrectly indicated that Respondent received \$ [REDACTED] in December 2015, but the RS corrected this to \$ [REDACTED], which corresponds to the issuance summary. [See Exh. 1, p. 10]. The record also contained actual FAP budget from each month during the OI period, which showed that the Department failed to correctly budget Respondent's earned income. [Exh. 1, pp. 12-39]. Had the Department correctly budgeted Respondent's income during the OI period, she would have only been entitled to receive \$ [REDACTED]. [Exh. 1, p. 10]. However, due to the Department error, Respondent received \$ [REDACTED] in FAP benefits, which resulted in a FAP OI in the amount of \$ [REDACTED] during the OI period.

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].

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

THEREFORE, IT IS ORDERED that the Department **may** initiate collection procedures for a \$ [REDACTED] FAP OI in accordance with Department policy.

CAP/mc



C. Adam Purnell
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]