



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 25, 2016  
MAHS Docket No.: 16-012049  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]  
Respondent:

**ADMINISTRATIVE LAW JUDGE:** Darryl Johnson

### **HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on October 20, 2016, from Lansing, Michigan. The Petitioner appeared on his own behalf. The Department of Health and Human Services (Department) was represented by Hearings Facilitator [REDACTED] and Recoupment Specialist [REDACTED].

### **ISSUE**

Did Petitioner 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. Petitioner was a recipient of FAP benefits from the Department.
2. The Department alleges Petitioner received a FAP OI during the period October 1, 2015, through July 31, 2016, due to Department error.
3. The Department alleges that Petitioner 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.

The Department presented evidence that Petitioner was an on-going FAP recipient. He had provided the Department with evidence of his new job and increased income, but the Department did not adjust his budget to reflect the increase in income. His wage records are found in Exhibit 1, Pages 31 et seq. When the Department discovered that it had not budgeted the additional income, it recalculated his budgets (Pages 11-30) to determine how much FAP he should have received, and compared that with how much FAP he actually received (Page 10). For most months, it correctly used 80% of his income to determine his monthly benefit. For example, for the month of July 2016, he had three pay checks (Pages 55-57) from one employer, with gross pay of \$ [REDACTED], \$ [REDACTED], and \$ [REDACTED]. His gross income for the month was \$ [REDACTED]. Because he received three bi-weekly checks, the total was divided by three, and then multiplied by 2.15 to get the budgetable amount of \$ [REDACTED]. He also had income of \$ [REDACTED] from tutoring, and his wife had one paycheck from a new job which grossed \$ [REDACTED]. (Page 30.) The Department budgeted \$ [REDACTED] for his self-employment, and \$ [REDACTED] for the wife's employment. The total of those three income sources is \$ [REDACTED], but the Department used just \$ [REDACTED] for "total earned" income (Page 29). It then reduced that \$ [REDACTED] by 20% to calculate the gross income as \$ [REDACTED].

For almost every month, the Department reduced the earned income by 20%. Because this was an agency error, the Department is to allow the 20% earned income deduction when determining an OI. See BEM 556 (7/1/13) p. 3. Even though it included that deduction for every other month, it did not include it in the budget (Page 17) for January 2016. The reported earned income for that month came from three paychecks (Page 18) totaling \$ [REDACTED] and, using the same method explained above to convert the three checks to a monthly amount, his earned income was \$ [REDACTED] for that month, plus the self-employment income of \$ [REDACTED]. In the OI budget (Page 17), the Department used a total earned income of \$ [REDACTED] instead of \$ [REDACTED], vastly overstating his income. Then, it did not grant him the 20% reduction. His gross income should have been \$ [REDACTED], but that is not the amount the Department used. The bottom line for that month is that they found he received an OI of \$ [REDACTED] for that month.

The Department has the burden of proving that Petitioner received an OI. It has established that there was an OI, but a sampling of the budgets demonstrates that the Department has not accurately determined the amount of the OI for each month. It should not be the Administrative Law Judge's responsibility to perform the calculations for every month of the OI; the Department should calculate them correctly and provide the correct calculations in its evidence packet.

As stated in BAM 700 (1/1/16) p 1, "When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance." That is true regardless of whether the error was a "client error" or an "agency error." The policy contains the imperative "must attempt to recoup the overissuance." There is no discretion on the part of the Department or the Administrative Law Judge.

Petitioner cited "7 USC 2202(b)(5)" for the proposition that he should not have to repay an OI if it is the result of a "systematic error". The first error is that the correct citation is 7 USC 2022(b)(5). The second error is that the OI can only be waived if there is found to be a "systemic state error." That is a situation where "a State agency overissued benefits to a substantial number of households in a fiscal year as a result of a major systemic error by the State agency, as defined by the Secretary..." There is no evidence the Secretary of Agriculture has defined a major systemic error within the Department that resulted in the OI. This OI was an isolated incident where his FAP was not budgeted correctly based upon the information available to the Department.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department established a FAP benefit OI. The specific amount of the OI is not being determined here. That is to be determined by the Department, using the actual income, and the correct budgeting process, for each month.

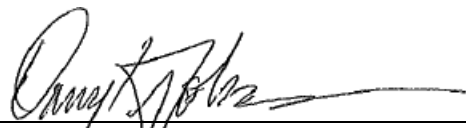
### **DECISION AND ORDER**

Accordingly, the Department is **MODIFIED**.

The Department is **ORDERED** to redetermine the OI for each of the OI months.

The Department is **ORDERED** to initiate collection procedures for the correct OI in accordance with Department policy.

DJ/mc

  
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**Darryl Johnson**  
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]