



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 11, 2016  
MAHS Docket No.: 16-012730  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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, an in-person hearing was held on October 5, 2016, from Lansing, Michigan. The Petitioner appeared on his own behalf. The Department of Health and Human Services (Department) was represented by 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, 2014, through November 30, 2014, due to Department error.
3. The Department alleges that Petitioner received \$ [REDACTED] OI that is still due and owing to the Department.
4. On July 27, 2016, the Department mailed a Notice of Overissuance (Exhibit 1 Pages 2-7), informing Petitioner of the alleged OI.

5. On September 8, 2016, the Department received Petitioner's hearing request, protesting the OI.

### **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. The Department incorrectly determined his FAP because it did not include in his FAP budget his unearned income which consisted of \$ [REDACTED] for SSI and \$ [REDACTED] for an SSI supplement each month. Those errors resulted in him receiving more in FAP than he would have received if his income and expenses had been budgeted correctly. Budgets were provided (Exhibit 1 Pages 9-15) to determine the correct amount of FAP he should have received. The OI is summarized (Page 3) as totaling \$ [REDACTED] for the months of October and November of 2014. The matter was referred to the RS on November 24, 2014. BAM 705 (1/1/16) p. 5 limits the OI period that can be recouped.

#### **Begin Date**

##### **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.

**Example:** An agency error was referred to the RS in May 2014 for the period of March 2011 through June 2012. The begin date would be July 2011. The period would be July 2011 through June 2012 since this is the latest 12-month period.

To determine the first month of the overissuance period for changes reported timely and not acted on, Bridges allows time for:

- The full standard of promptness (SOP) for change processing, per BAM 220.
- The full negative action suspense period; see BAM 220, EFFECTIVE DATE OF CHANGE.

### **End Date**

The overissuance period ends the month (or pay period for CDC) before the benefit is corrected.

In this case, the matter was referred to the RS on November 24, 2014 (Page 9). As explained in the policy, the OI period begins at the later of: (a) 12 months before the date the OI was referred to the RS; or (b) the first month when benefit issuance exceeds the amount allowed by policy. The example given above is not consistent with the policy. In that example, if the error were referred in May 2014, the OI period would begin in May 2013, because that date is later than the OI period that began in March 2011.

Applying the policy as written (and disregarding the example) the OI period in this case would not start until 12 months before the matter was referred. Consequently, the OI period cannot begin before November 24, 2013. The Department is seeking recoupment for the period of October 1, 2014, through November 30, 2014, and therefore it can seek recoupment for the entire OI period.

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 attempted to show that the Department should have included rent in his budget during the OI period. The budgets that were provided did not include any shelter expenses. It is possible that Petitioner paid shelter expenses during the two months at issue, but he had no evidence at the time of the hearing to prove what that expense was. The Department had mailed to him a Verification Checklist (Pages 16-17) on August 6, 2014, asking him to provide verification of his shelter expenses, but he did not provide the verification as requested. Consequently, the Department had no verified shelter expense that it could include in his budget.

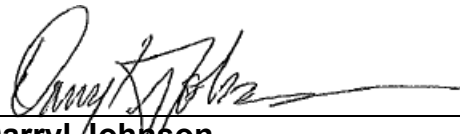
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department established a FAP benefit OI to Petitioner totaling \$ [REDACTED].

**DECISION AND ORDER**

Accordingly, the Department is **AFFIRMED**.

The Department is ORDERED to initiate collection procedures for a \$ [REDACTED] 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]

**Petitioner**

[REDACTED]