



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR



Date Mailed: November 18, 2016  
MAHS Docket No.: 16-015340  
Agency No.: [REDACTED]  
Petitioner:  
Respondent: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Darryl Johnson

### **HEARING DECISION**

Upon the request for a hearing by the Petitioner, 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 November 15, 2016, from Lansing, Michigan. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Petitioner appeared on his own behalf.

### **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.
2. The Department alleges Respondent received a FAP OI during the period August 1, 2014, through May 31, 2015, due to Department/Agency error.
3. The Department alleges that Respondent 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.

“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.” “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 (1/1/16), pp. 1 and 7.

When the Department is calculating a FAP budget, it reduces the earned income by 20%, and drops the cents, to determine the income on which the FAP is based. BEM 556 (7/1/13), p. 3. If there is an allegation of an intentional program violation, or if there is an over-issuance due to failure to report earned income, then the Department does not allow the 20% earned income deduction. *Id.*

In this case, Petitioner was receiving FAP when he went back to work. He testified that he reported to the Department at least three times that he had gone back to work. The Department did not adjust his FAP budget, and he received more in FAP than he would have received if the budget had been adjusted to account for his income. Originally the Department considered this to be a client error, but they changed their position and concluded the OI was due to an agency error. They sent a notice to Petitioner on July 15, 2015, informing Petitioner that it was changed to an agency error.

The Department presented budgets (Exhibit 1 Pages 44-63) in which it calculated the OI for each of the pertinent months. What it did NOT do, however, was give Petitioner the 20% reduction in earned income.

The Department has the burden of proving that there was an OI. It also has the burden of proving the amount of the OI. The budgets that it submitted would, if accurate, meet the first requirement, but because they are inaccurate they do not meet the second requirement. This matter was pending in the Department for more than a year. There was ample time for the budgets to be recalculated to reflect the 20% reduction. It is not the Administrative Law Judge’s responsibility to search through the evidence and

recalculate the monthly budgets for a ten-month period to determine the correct amount of the OI.

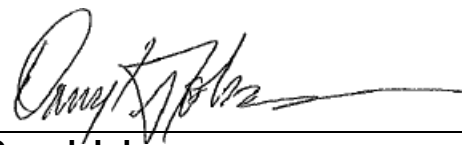
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not establish a FAP benefit OI to Respondent totaling \$ [REDACTED]

**DECISION AND ORDER**

Accordingly, the Department is **REVERSED**.

The Department is **ORDERED** to cease collection procedures.

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]