



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: June 20, 2016
MAHS Docket No.: 16-003052
Agency No.: [REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 May 31, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Recoupment Specialist, and [REDACTED], Eligibility Specialist/ Assistance Payment Worker. Respondent appeared and represented herself.

ISSUE

Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits between July 1, 2015 and September 30, 2015?

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 and received \$511 in monthly FAP benefits for each month from July 2015 to September 2015.
2. On June 12, 2015, Respondent returned to work, receiving her first paycheck after her return on June 19, 2015 (Exhibit E, p. 2).
3. The Department did not recalculate her FAP budget to take into consideration her employment income.

4. The Department alleges Respondent received FAP OI totaling \$1533 during the period July 1, 2015, through September 30, 2015, due to client error.
5. On December 10, 2015, the Department sent Respondent a Notice of Overissuance notifying her of the FAP OI and repayment terms (Exhibit A).
6. On March 3, 2016, Respondent filed a request for hearing disputing the FAP 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 alleges that Respondent failed to timely report her employment at [REDACTED] and, as a result, her employment income was not included in the calculation of her FAP budget and she was overissued FAP benefits for July 1, 2015 to September 30, 2015 due to client error. A client error occurs when the client gave incorrect or incomplete information to the Department. BAM 700 (January 2016), p. 6; BAM 715 (January 2016), p. 1.

At the hearing, Respondent did not dispute that she had returned to work on June 12, 2015 but argued that she had timely reported her employment to the Department on June 19, 2015, within the ten day period for reporting changes. Respondent's worker contended that Respondent had not reported the employment, explaining that she maintained phone records of all calls and when she reviewed her records in connection with the recoupment referral she had not found any call from Respondent listed in her log. To support their testimony, the worker was asked to provide copies of her June 19, 2015 log, and Respondent was given the opportunity to provide copies of her phone calls. The worker's logs showed no phone call from Respondent on June 19, 2015 (Exhibit H). However, Respondent produced phone records from her cell phone service provider showing that on June 22, 2015, a two-minute call was placed to Respondent's worker at the same number identified for the worker on an April 14, 2015 redetermination and October 20, 2015 verification of employment (Exhibits 1, D and E). While the call was not made on June 19, 2015 as Respondent testified on the record, it was timely made within 10 days of the date she received her first paycheck on June 19, 2015. BAM 105 (April 2015), p. 11. Although the record does not reveal the nature of

the conversation, it sufficiently corroborates Respondent's testimony that she notified her worker by phone of her employment. Because Respondent timely notified the Department of her employment, the Department has failed to establish that its failure to budget income was due to client error. Instead, because the Department delayed processing the reported change, the delay in processing the change is found to be an agency error. BAM 705 (January 2016), p. 1.

Even though the FAP OI was due to agency error, when a client group receives more benefits than entitled, the Department must nevertheless attempt to recoup the OI. BAM 700 (January 2016), p. 1. The amount of the OI is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700, p. 1.

In this case, the Department established that Respondent was issued \$511 in monthly FAP benefits for each month from June 2015 through September 2015 (Exhibit F). The Department alleges that, because Respondent was not eligible for any FAP benefits for any of those months, she was overissued \$1533 in FAP benefits.

For FAP OI due to agency error, the determination of the first month of the overissuance period for changes reported timely and not acted on requires consideration of (i) the 10 day standard of promptness for change processing and (ii) the full 12 day negative action suspense period. BAM 705 (January 2016), pp. 5-6; BAM 220 (April 2016), pp. 8, 9. For a change timely reported on June 22, 2015, the first month of the FAP OI period is August 2015. Therefore, the Department erred when it included the \$511 in FAP benefits issued to Respondent in July 2015 in calculating the FAP OI.

For the FAP OI in August 2015 and September 2015, the Department presented FAP OI budgets showing that Respondent was ineligible for FAP benefits in August 2015 based on her net income and ineligible for FAP benefits in September 2015 based on her gross income (Exhibit F). Because the FAP OI was due to agency error, Respondent was eligible for a 20% earned income deduction in the calculation of her net income for August 2015. See BAM 715, p. 8. Because the FAP OI budget for August 2015 does not include this deduction, the Department has failed to establish the FAP OI for August 2015.

A review of the September 2015 FAP OI budget shows that, when Respondent's actual pay as shown on the September 2015 paystubs attached to the verification of employment received by the Department on October 29, 2015 is calculated, the Department under-calculated Respondent's gross earned income for September 2015 at \$2496.83 (Exhibit E). However, even with earned income calculated at \$2496, when added to the other earned income in the household totaling \$1052.21, the total household gross income exceeded the gross income limit of \$3300 applicable to a three person FAP group. RFT (October 2014), p. 1. Therefore, Respondent was not eligible for any of the \$511 in FAP benefits issued to her in September 2015.

Therefore, the Department has established that Respondent was overissued \$511 in FAP benefits for the month of September 2015.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department established that, due to agency error, Respondent received a FAP OI totaling \$511.

DECISION AND ORDER

Accordingly, the Department is AFFIRMED for a reduced FAP OI of \$511 for the period June 2015 to September 2015.

The Department is ORDERED to

1. reduce the FAP OI to \$511 and initiate collection and/or recoupment procedures for a \$511 FAP OI in accordance with Department policy and
2. to reclassify the error as agency error.

ACE/tlf



Alice C. Elkin
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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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