



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: October 17, 2016  
MAHS Docket No.: 16-005934  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Susanne E. Harris

### **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 October 4, 2016, from Lansing, Michigan. The Department was represented by [REDACTED] Recoupment Specialist. The Respondent did not appear. This matter having been initiated by the Department and due notice having been provided to Respondent, the hearing was held in the Respondent's absence.

### **ISSUE**

Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to collect?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Respondent was a recipient of FAP benefits from the Department.
2. The Department alleges the Respondent received a FAP OI during the period of December 1, 2014 to October 31 of 2015, due to the Respondent's error.
3. The Department alleges that the 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.

Additionally, BAM 700 (2016) p. 1, provides that when a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the OI. There are three types of OI; agency error, client error and Intentional Program Violation (IPV). pp. 4, 5. An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between department divisions such as services staff.
- Data exchange reports were not acted upon timely.

If the Department is unable to identify the type of error, it is to be recorded as an agency error. pp.4, 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. 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:

- The hearing request is later withdrawn.
- MAHS denies the hearing request.
- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.

- The hearing decision upholds the Department's actions; see BAM 600.

BAM 705 (2016) p. 6, provides that the amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 715 (2006) p. 8, provides that for client error OI is due, at least in part, to failure to report earnings, the Department's worker is not to allow the 20% earned income deduction on the unreported earnings.

In this case, though the Respondent failed to appear for the hearing the Respondent stated in her hearing request that she was incarcerated during the OI time period. The Recoupment Specialist at the hearing was asked whether or not the Petitioner actually used her benefits or whether those FAP benefits were expunged from her EBT card. The Recoupment Specialist testified that as of the day of the hearing one month's worth of benefits had been expunged. The Recoupment Specialist also testified that the day after this scheduled hearing, all of the benefits would be expunged.

After the hearing, on October 6, 2016, the Recoupment Specialist did submit some documents which indicates that at least three months of the Respondent's benefits had been expunged. These documents were marked Department's exhibit H. They indicate that the Respondent's EBT card was being expunged, due to inactivity, as recently as September 11, 2016 and the Department has been being expunging the benefits since at least August 11, 2015. It cannot be determined from these documents whether or not the entire amount had been expunged as the Recoupment Specialist testified. Furthermore, as the benefits have been expunged as recently as September 11, 2016, the Respondent likely has an active FAP case and this hearing should have been pursued as a recoupment hearing, not a debt collection.

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 the Respondent totaling \$ [REDACTED]

### **DECISION AND ORDER**

Accordingly, the Department is **REVERSED**.



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Susanne E. Harris  
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]

**DHHS**

[REDACTED]

**Respondent**

[REDACTED]