



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.: 16-008414
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, a telephone hearing was held on October 4, 2016, from Lansing, Michigan. The Department of Health and Human Services (Department) was represented by Recoupment Specialist [REDACTED]. Petitioner did not appear at the hearing and it was held in Petitioner's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUE

Did Petitioner receive an over-issuance (OI) of Food Assistance Program (FAP) and Family Independence Program (FIP) 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 FIP and FAP OI during the period January 1, 2013, through March 31, 2013, due to Department error.
3. The Department alleges that Petitioner received \$ [REDACTED] FAP OI and a \$ [REDACTED] FIP OI that are still due and owing to the Department.

4. On April 14, 2016, the Department mailed a Notice of Overissuance (Exhibit 1 Pages 7-12), informing Petitioner of the alleged FAP OI, and a Notice of Overissuance (Pages 22-26) informing Petitioner of the alleged FIP OI.
5. On June 15, 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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The Department presented evidence that Petitioner was an on-going FAP and FIP recipient. The Department incorrectly determined her FAP because it erroneously budgeted her income, due to her failure to report earned income. Those errors resulted in her receiving more in FAP than she would have received if her income had been budgeted correctly. Budgets were provided (Exhibit 1 Pages 12-20 and 27-33) to determine the correct amount of FAP and FIP the group should have received. The FAP OI is summarized (Page 12) as totaling \$[REDACTED] from January 2013 through April 2014. The FIP OI is summarized (Page 27) as totaling \$[REDACTED] from January 2013 through March 2013. 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 April 9, 2013, after it was discovered on January 12, 2013, according to the testimony of the RS. 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 April 9, 2012. The Department is seeking recoupment for FAP during the period of January 1, 2012 through March 31, 2013 (Page 7), and that all occurred before the 12-month period preceding the referral. Likewise, the Department is seeking recoupment for FIP during the period of January 1, 2012 through March 31, 2013 (Page 22), and that all occurred before the 12-month period preceding the referral.

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.

While the Administrative Law Judge has no discretion whether to order recoupment, the burden is on the Department to comply with policy in its recoupment efforts. The policy bars recoupment of an OI that occurred more than 12 months before the OI was referred to the RS. In this case, both the FAP and FIP OI occurred more than 12 months before they were referred to the RS. Therefore, recoupment will not be ordered.

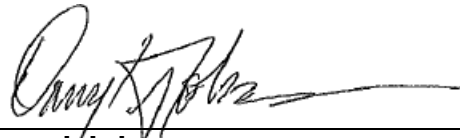
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department has not established either a FAP or FIP benefit OI to Petitioner.

DECISION AND ORDER

Accordingly, the Department is **REVERSED**.

The Department is ORDERED to cease collection of the alleged FAP and FIP OI.

DJ/mc



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]