



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: September 29, 2016
MAHS Docket No.: 16-011109
Agency No.: [REDACTED]
Petitioner: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three-way telephone hearing was held on September 15, 2016, from Detroit, Michigan. The Department was represented by [REDACTED] Recoupment Specialist. The Respondent was represented by [REDACTED], Authorized Hearing Representative (AHR). The Respondent, [REDACTED], also appeared.

ISSUE

Did Respondent receive an overissuance (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 an FAP OI during the period [REDACTED], due to **Department's (Agency)** error.
3. The Respondent applied for FAP benefits on [REDACTED] advising the Department that she had resident alien status. The Respondent provided the

Department her permanent resident card indicating her entry into the United States (U.S.) occurred on [REDACTED]. Exhibit 5, p. 14, and Exhibit 6.

4. The Petitioner's immigration status at the time of entry was IR 5. Exhibit 5.
5. The Department alleges that Respondent received \$ [REDACTED] OI that is still due and owing to the Department. Exhibit 1, p.1.

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.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (January 2016), p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 705 (January 2016), p. 6.

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. BAM 705, p. 1. 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 (Wage Match, New Hires, BENDEX, etc.).

BAM 705, p. 1. If unable to identify the type of overissuance, record it as an agency error. BAM 705, p. 1.

To be eligible for FAP benefits, a person must be a U.S. citizen or an alien admitted to the U.S. under a specific immigration status. BEM 225 (January 2014), p. 2.

Respondent testified that she is not a U.S. citizen and has been a permanent resident since [REDACTED]. At time of application or redetermination, Respondent's immigration status was a permanent resident. BEM 255 (January 1, 2012), p. 1-5.

An individual who is a permanent resident alien with a class code on the permanent residency card other than RE, AM or AS is not eligible for FAP benefits for the first five years in the U.S. unless the alien is a qualified military alien or the spouse or dependent child of a qualified military alien. BEM 225, pp. 7-8, 30; MREM, § 3.6. A qualified military alien is a qualified alien on active duty in, or veteran honorably discharged from, the U.S. Armed Forces. BEM 225, p. 5; MREM, § 3.6.

A person who does not meet an acceptable alien status, including undocumented aliens and non-immigrants who have stayed beyond the period authorized by the U.S. Citizenship and Immigration Services, are not eligible for Food Assistance. BEM 225, p. 9. The alien status of each non-citizen must be verified to be eligible. BEM 225, p. 2.

In this case, the Department alleges that Respondent received an OI for her FAP benefits (Agency error) because the Department failed to properly register the Respondent under the correct immigration code, IR-5, and thus, incorrectly found her eligible for FAP benefits resulting in Agency Error and an OI.

Department policy found in BEM 225 provides information regarding acceptable immigration codes allowing an individual to receive food assistance. In order to receive food assistance if a person is a permanent resident, the alien I-551 class code is other than RE, AM or AS; they are ineligible to receive food assistance for the first five years in the U.S. BEM 255, (January 1, 2012), p.26. As the Respondent did not enter the U.S. until [REDACTED], the Respondent has not resided in the U.S. for five years, and thus, given her class code of IR-5, she is and was not eligible to receive food assistance during the period [REDACTED]. Exhibit 3.

Based upon the evidence presented at the hearing, including the benefit issuance summary, and OI summary, it is determined that the Department correctly determined the OI amount and the immigration status of the Petitioner. In accordance with BAM 705, the Department could only go back 12 months from the discovery date for Agency error, which in this case would be [REDACTED]. Exhibit 1.

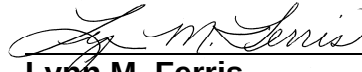
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish an FAP benefit OI to Respondent totaling \$ [REDACTED].

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.

LMF/jaf



Lynn M. Ferris
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]

Authorized Hearing Representative

[REDACTED]

Via email

[REDACTED]