



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 21, 2016
MAHS Docket No.: 16-015606
Agency No.: [REDACTED]
Petitioner: [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 3 way telephone hearing was held on November 21, 2016, from Detroit, Michigan. The Department was represented by [REDACTED] [REDACTED], Recoupment Specialist. The Respondent was represented by herself.

ISSUE

Did Respondent receive an over-issuance (OI) of Food Assistance (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 Food Assistance benefits from the Department.
2. The Department alleges Respondent received a FAP OI during the period September 1, 2015 through August 31, 2016, due to **Department's** error.
3. The Department alleges that Respondent received [REDACTED] OI that is still due and owing to the Department. Exhibits F and G.
4. During the period of OI, the Respondent's son was in college and not working.

5. The Respondent reported that her son was in college to the Department during several Redeterminations completed in September 2015 and April 2015. Exhibits C and D.

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, in this case due to the Department's error the Respondent's son was included in her FAP group even though Respondent reported to the Department that he was a college Student. At the hearing the Respondent reported that her son was not working while in college and attended full time. In order to be eligible for FAP while in College, an individual must meet one of the following requirements:

FAP Only

A person is in student status if he is:

- Age 18 through 49 and
- Enrolled half-time or more in a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs **regardless** of whether a diploma is required.

In order for a person in student status to be eligible, they must meet one of the following criteria:

- Receiving FIP.

- Enrolled in an institution of higher education as a result of participation in:
 - A Job Training Partnership Act (JTPA) program.
 - A program under section 236 of the Trade Readjustment Act of 1974 us 19 USC 2341, et. seq.
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year.

To qualify under this provision the student must be approved for work study during the school term and anticipate actually working during that time. The exemption:

- Starts the month the school term begins or the month work study is approved, whichever is later.
- Continues until the end of the month in which the school term ends, or when the local office becomes aware that the student has refused a work-study assignment.
- Remains between terms or semesters when the break is less than a full month, or the student is still participating in work study during the break.

- Providing more than half of the physical care of a group member under the age of six.

The person remains in student status while attending classes regularly. Student status continues during official school vacations and periods of extended illness. Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). BEM 245 (October 1, 2016), p. 4-5.

In this case, based upon the testimony of the Respondent, her son met none of the conditions for eligibility listed above and thus was not eligible for FAP benefits. Given this situation, the Department correctly determined that the Respondent received an OI of FAP benefits as her son was improperly included in her FAP group through no fault of Respondent.

The Department alleges that during the period September 1, 2015 through August 31, 2016, the Petitioner received an OI of [REDACTED] in food assistance that she was ineligible to receive Exhibit 1, p. 6-7.

Department policy states that DHHS requests a debt collection hearing when the grantee of an inactive program requests a hearing after receiving the DHS-4358B, Agency and Client Error Information and Repayment Agreement. BAM 725 (July 2014), pp. 16-17. Active recipients are afforded their hearing rights automatically, but DHHS must request hearings when the program is inactive. BAM 725, p. 17 and see also BAM 715 (July 2014), pp. 11-12.

Based on this review, the Department clearly established that for the months in question the Respondent received an over issuance in the amount of [REDACTED]. The Respondent received [REDACTED] in FAP and was only entitled to [REDACTED] in FAP benefits. The Department also acknowledged Agency Error.

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. An example is:

☐ Available information was not used or was used incorrectly. BAM 715 (January 1, 2016), p. 1.

The Department presented overissuance budgets for the OI months based on the incorrect group size. The OI budgets were calculated with 3 FAP group members, instead of 4 FAP group members. Based upon the review of these budgets for the months in question, the Department correctly determined the overissuance amount. Exhibit G.

Based on this review, the Department clearly established that for the months in question, the Respondent received an over issuance in the amount of [REDACTED]. The Respondent also confirmed that the earned income for Respondent and her daughter were correct except for July and August 2016, but as determined at the hearing, the Respondent did not report to the Department that she was not working during July 2016 and working only 2 weeks in August 2016, thus the Department correctly used the income information it had available and which was reported by Respondent.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish a Food Assistance 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.

LF/tm



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]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CC:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]