



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: February 17, 2017
MAHS Docket No.: 16-017763
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

HEARING DECISION

Upon a hearing request by the Department of Health and Human Services (Department) to establish an over-issuance (OI) of benefits to Petitioner, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 400.43a, and 24.201, *et seq.*, and Mich Admin Code, R 400.941, and in accordance with 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. After due notice, a telephone hearing was held on February 9, 2017, from Lansing, Michigan. Participants on behalf of the Department included Recoupment Specialist [REDACTED] Respondent appeared and testified.

ISSUE

Did Respondent receive a \$ [REDACTED] Client Error over-issuance of Food Assistance Program benefits from November 1, 2010 to December 31, 2010?

FINDINGS OF FACT

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

1. On January 8, 2009, Petitioner submitted an Assistance Application (DHS-1171) for Food Assistance Program (FAP) benefits.
2. On June 1, 2010, Petitioner submitted a Semi-Annual Contact Report (DHS-1046).
3. On November 16, 2010, Petitioner was sent a Redetermination (DHS-1010) form.

4. On November 29, 2010, Petitioner submitted the Redetermination (DHS-1010).
5. On May 17, 2011, Specialist [REDACTED] submitted an Over-Issuance Referral (DHS-4701) to a Recoupment Specialist. Department Exhibit A page 1.
6. On October 21, 2011, a Wage Match was run on Petitioner's spouse. Department Exhibit A page 28.
7. On November 10, 2016, Petitioner was sent a Notice of Over-Issuance Packet.
8. On November 21, 2016, Petitioner/Respondent submitted a hearing request.
9. On November 28, 2016, the Department requested this Debt Establishment hearing on behalf of Respondent.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of 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 .3011.

Bridges Administration Manual (BAM) 715 Client/CDC Provider Error Over-Issuance (2-1-2010) was in effect on May 17, 2011 when this over-issuance referral was made. It provided that all client error over-issuances be referred to the Recoupment Specialist within 60 days of suspecting that an over-issuance existed. BAM 715 goes on to provide the following requirements for the Recoupment Specialist.

FIP, SDA, CDC and FAP

All referrals must be logged into the RS Tracking System within 10 days of receipt. All referral dispositions must be entered on the RS Tracking System within 10 days of disposition.

Within **60** days of receiving the referral, the RS must:

- Determine if an OI actually occurred.
- Determine the OI type.

Within **90** days of determining an OI occurred, the RS must:

- Obtain all evidence needed to establish an OI.
- Calculate the OI amount.
- Establish the OI discovery date.
- Send a DHS-4358A, B, C & D to the client.
- Enter the FIP, SDA, CDC or FAP OI on the Benefit Recovery System (BRS), **or**
- Refer the OI to OIG for investigation if IPV is suspected.
- Send a DHS-4701A, Over-Issuance Referral Disposition, to the specialist explaining the final disposition of the OI.

Bridges Administration Manual (BAM) 715 Client/CDC Provider Error Over-Issuance (1-1-2016) contains the identical time limit requirements.

The Delegation of Hearing Authority issued to the Michigan Administrative Hearing System specifically states “Administrative hearing officers have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or overrule or make exceptions to Department policy.” The Department of Health and Human Services’ is required to develop and promulgate policy manuals that comply with all state and federal authority, including constitutions, statutes and administrative rules.

The responsibility of an Administrative Law Judge conducting hearings on Departmental actions, is to determine if the action proposed, or taken, is correct. That determination is based on application of the Department’s policies to the facts in evidence. The evidence in this record clearly shows that the suspected over-issuance was referred to the Recoupment Specialist on May 17, 2011. August 15, 2011 was the 90th day after the over-issuance referral. The Department did not issue the Notice of Over-Issuance Packet until November 10, 2016. Compliance with the authority delegated to conduct this hearing, does not include ignoring the time limits established in Department policy.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy regarding this alleged over-issuance.

DECISION AND ORDER

Accordingly, the Department’s decision is **REVERSED**.

The Department is **ORDERED** to cease and reverse any collection procedures or actions initiated with regard to Petitioner’s Food Assistance Program (FAP) benefits issued between November 1, 2010 and December 31, 2010.

GH/nr



Gary Heisler
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]