



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: March 9, 2017
MAHS Docket No.: 17-001677
Agency No.: [REDACTED]
Petitioner: MDHHS
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

HEARING DECISION

Upon the request for a hearing by Respondent, 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 [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED], Recoupment Specialist.

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 Respondent's absence in accordance with Department of Health and Human Services Bridges Administrative Manual (BAM) 725 (October 2015), pp. 16-17.

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 an ongoing recipient of FAP benefits from the Department.
2. On [REDACTED], the Department sent Respondent a Notice of Overissuance (OI notice) informing him of an FAP OI for the period of [REDACTED], to [REDACTED], due to agency error. Exhibit A, pp. 72-76. The OI notice also indicated that the OI balance was \$ [REDACTED] based on the

Office of Quality Assurance audit of his case that the Department erred in determining FAP benefits. Exhibit A, p. 72.

3. On [REDACTED], Respondent filed a hearing request, protesting the Department's action. Exhibit A, 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/the Department) 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.

In the present case, the Office of Quality Assurance (OQA), within the Michigan Department of Health and Human Services (MDHHS/the Department), conducted a review of Respondent's FAP case and found that the Department did not correctly determine the group's eligibility for FAP benefits when considering Respondent's self-

employment income. Based on the OQA findings, the Department seeks an agency error OI and recoupment of \$ [REDACTED] of Respondent's (the husband) FAP benefits for the period [REDACTED], to [REDACTED].

As background, the Department is subject to audits and reviews of its performance. BAM 320 (July 2013), p. 1. Types of audits include the Office of Quality Assurance (OQA) Food Assistance Program and Medicaid reviews. BAM 320, p. 1. The purpose of the review is to determine for active cases if the eligibility decision and/or benefit amount for the sample month was correct, or for negative case reviews, if the denial or closure (FAP and Medical Assistance (MA)) or temporary suspension of benefits (FAP only), was correct. BAM 320, p. 1. Quality Control (QC) review findings of active cases determine the incidence and dollar amounts of errors. BAM 320, p. 1. Upon completing the review, the (OQA) will electronically provide a DHS-1599, Review Results Findings, summary to the local office with copies to business service center and central office staff. BAM 320, p. 1.

As part of the evidence record, the Department presented a "Final FAP Case Review Results Summary" and a "FAP Case Review Results Narrative" from the OQA (hereinafter referred to as the "OQA report") that showed the results of Respondent's FAP review. Exhibit A, pp. 9-12. Specifically, the OQA report stated that more self-employment income was received than budgeted. Exhibit A, p. 3. For example, the OQA provided a sample month to show how the Department underbudgeted Respondent's self-employment income. For [REDACTED], the Department budgeted \$ [REDACTED] for Respondent's self-employment income. Exhibit A, pp. 9-17. However, the OQA report indicated that during an interview with Respondent, he provided them with his 1040 U.S. Individual Income Tax Return for [REDACTED] and the [REDACTED] Profit or Loss From Business, Schedule C form, which showed gross receipt of \$ [REDACTED] total expenses of \$ [REDACTED] resulting in a net profit of \$ [REDACTED]. Exhibit A, pp. 3 and 27. The Department then takes his net income and divides it by 12 months to obtain a monthly average, which resulted in a monthly self-employment income of \$ [REDACTED]. Exhibit A, p. 10. This is the amount the Department argued should have been budgeted, rather than \$ [REDACTED]. It should be noted that the Department previously had Respondent's 1040 U.S. Individual Income Tax Return for [REDACTED] and the [REDACTED] Profit or Loss From Business, Schedule C form. Exhibit A, pp. 9 and 20-24.

Policy states that an individual who runs their own business is self-employed. BEM 502 (July 2015), p. 1. The amount of self-employment income before any deductions is called total proceeds. BEM 502, p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for farm loss amounts. BEM 502, p. 3. Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. A list of allowable and non-allowable expenses is located in BEM 502. See BEM 502, pp. 3-

4. Verification sources for self-employment include income tax returns or other sources listed in BEM 502. See BEM 502, p. 6.

Verification sources for self-employment income include the following:

- Primary source - Income tax return provided:
 - The client hasn't started or ended self-employment, or received an increase/decrease in income, etc.
 - The tax return is still representative of future income.
 - The client filed a tax return.

* * *

BEM 502, p. 7.

Based on the above self-employment income policy, the Department properly budgeted Respondent's self-employment income of \$ [REDACTED]. See BEM 502, pp. 1-7. The Department then took this amount and applied it as Respondent's self-employment income to the OI budgets for the period of [REDACTED] to [REDACTED]. Exhibit A, pp. 45-71.

Additionally, the OQA report found changes that had to be applied to the budget, which included the household composition and shelter obligations. Exhibit A, p. 10. Specifically, the OQA report stated the following: (i) household composition - Respondent reported his son moved into the home on [REDACTED]; and (ii) shelter obligation - Respondent reported that the household was obligated to pay property taxes and homeowner's insurance expenses. Exhibit A, p. 10. The OQA report stated that it is recommended that the circumstances regarding the household composition and shelter expenses be reviewed to avoid possible errors in the future. Exhibit A, p. 10.

In regards to the shelter obligation, the undersigned ALJ finds that the Department properly budgeted Respondent's property taxes and homeowner's insurance expenses in the OI budgets. See Exhibit A, pp. 36-42 and 45-71 and BEM 554 (October 2014), p. 13. However, the undersigned ALJ finds that the Department failed to satisfy its burden of showing that it properly calculated Respondent's household composition/group size. As part of the evidence record, the Department presented the OI budgets for the period of [REDACTED] to [REDACTED]. See Exhibit A, pp. 45-71. A review of the OI budgets found them to be unclear in regards to the household composition/group size based on two reasons. First, the Department was calculating a group size of four for the benefit periods of [REDACTED] to [REDACTED]. Exhibit A, pp. 64-71. However, the OI budgets showed the group size decreased to three for the remaining benefit periods of [REDACTED] to [REDACTED]. Exhibit A, pp. 46-63. The evidence record was unclear why this decreased occurred. Second, as stated above, the OQA report stated that Respondent reported his son moved into the home on [REDACTED]. Exhibit A, p. 10. Based on this reported change in group composition, Respondent's FAP group size should have increased effective [REDACTED].

█ See BEM 212 (October 2015), p. 9, (member add/delete policy). Yet, the OI budgets show that the group size remained unchanged at three from █ to █. Exhibit A, pp. 46-55. Again, the evidence record was unclear why this increase was not reflected in the OI budgets, when in fact, the OQA report states that Respondent reported a change in household composition.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that Respondent received an OI of FAP benefits totaling \$ █. Even though the undersigned ALJ concluded that the Department properly budgeted the self-employment income and shelter obligations, the undersigned ALJ reviews the entire OI budgets, including the group composition, to ensure the OI amount is properly calculated. The undersigned ALJ finds that the Department failed to establish that it properly calculated the group composition. As shown in the above examples, the evidence record failed to show why the group composition decreased effective █, and why the group composition did not increase effective █. Because the Department failed to show that it properly calculated the group composition, the undersigned ALJ finds that the Department failed to establish by a preponderance of evidence that Respondent received an OI of FAP benefits totaling \$ █ for the period of █, to █.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did not** establish an FAP benefit OI to Respondent totaling \$ █ for the period of █, to █.

Accordingly, the Department is **REVERSED**.

The Department is **ORDERED** to delete the OI and cease any recoupment and/or collection action.

The Department is **FURTHER ORDERED** to reimburse Respondent any funds that had already been recouped and/or collected in accordance with Department policy.

EJF/jaf



Eric J. Feldman

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]

[REDACTED]