



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 31, 2017
MAHS Docket No.: 17-002741
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 three-way telephone hearing was held on [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED], Recoupment Specialist of the Office of Inspector General (OIG). The Respondent was represented by herself.

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. At the time of the hearing the Respondent's FAP case was inactive.
2. The Department alleges Respondent received an FAP OI during the period [REDACTED] through [REDACTED], due to **Department's** error (Agency Error).
3. The Department alleges that Respondent received \$ [REDACTED] OI that is still due and owing to the Department.

4. The Department sent the Respondent a Notice of Overissuance on [REDACTED] [REDACTED] advising the Respondent that the Department considered the OI to be due to Agency Error "due to agency interface with UIA did not add income towards FAP. The Respondent did not report starting of receipt of unemployment compensation benefits". (Exhibit A.)
5. The Respondent completed a Redetermination on [REDACTED], advising the Department that she and her husband were seeking unemployment benefits and looking for employment. (Exhibit H.)
6. The Department issued a Notice of Case Action on [REDACTED], effective [REDACTED] [REDACTED] advising Respondent that she was approved for FAP benefits in the amount of \$ [REDACTED] and that she was a change reporter. The Notice indicated that no income was budgeted to determine the amount of FAP benefits. (Exhibit G.)
7. The Respondent received Unemployment Compensation Benefits (UCB) beginning [REDACTED] and ending [REDACTED]. Respondent's spouse began receiving UCB on [REDACTED], and ending on [REDACTED]. The Respondent's did not report their receipt of UCB benefits to the Department. (Exhibits D and E.)
8. The Respondent requested a timely hearing on [REDACTED], protesting the Department's actions

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.

In this case, the Respondent completed and returned a redetermination on [REDACTED] for a FAP group size of six. The Redetermination advised the Department that Respondent's FAP group had no income and she and her spouse were seeking UCB and employment. (Exhibit H.) Thereafter, the Respondent and her spouse both began receiving UCB. The Department issued a Notice of Case Action on [REDACTED] advising Respondent she was a change reporter and indicating that no income was budgeted to determine the amount of FAP benefits.

The Department conceded Agency Error because the UCB interface with the Department's Bridges System failed to add the income into the Respondent's case thereby creating an OI of benefits. See BAM 802 (July 1, 2014), p. 3.

The Department's Bridges System is supposed to populate Michigan UCB income automatically and did not do so in Respondent's case. The Department seeks recoupment of \$ [REDACTED] in FAP benefits over issued to the Respondent.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (May 2014), 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 715 (January 1, 2016), p. 6.

An **agency error** is caused by incorrect actions (including delayed or no action) by the Department of Human Services (DHS) staff or department processes. 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.).

If unable to identify the type, record it as an agency error. BAM 705, (January 1, 2016), p. 1.

If improper budgeting of income caused the overissuance, use actual income for the past overissuance month for that income source.

Convert income received weekly or every other week to a monthly amount. Bridges will automatically convert based on answers to on-screen questions. **Exception:** For FAP only, income is not converted from a wage match for any type of overissuance. BEM 705, p. 8.

At the hearing, the Department presented OI budgets for each month of the OI period starting with [REDACTED]. (Exhibit C.) The budgets were reviewed at the hearing, and it was determined that the Department converted the unemployment income received and because these UCB benefits are paid biweekly. In calculating the OI, the Department

added the average of the monthly biweekly benefits and multiplied the average unearned income by 2.15. Normally, when determining earned income, the conversion is applied to take into account fluctuations due to the number of scheduled pays in a month. See BEM 505, (July 1, 2016), p. 9.

The UCB benefits that were received in this case were paid biweekly for the Respondent's spouse in the amount of \$ [REDACTED]. (Exhibit D.) The UCB that were received by Respondent were paid biweekly in the amount of \$ [REDACTED] for [REDACTED] and [REDACTED]; and [REDACTED] and \$ [REDACTED] for [REDACTED]. (Exhibit E.) It should be noted that UCB benefits are unearned income, and the actual unearned income received in this case is known. In addition, the conversion of these benefits results in the Department seeking an OI for FAP based upon more income than the Respondents in this case received. The gross biweekly UCB for Respondent's spouse is \$ [REDACTED] ($\$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED]$). When the benefits are converted, the income becomes $\$ [REDACTED] \times 2.15 = \$ [REDACTED]$. (See Exhibit C, p. 8.) The same calculation was also made for the Respondent's unearned income from UCB ($\$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED]$) and when benefits are converted, ($\$ [REDACTED] \times 2.15 = \$ [REDACTED]$). (See Exhibit C, p. 9.) This results in the OI amount being adjusted incorrectly because the unearned income used is incorrect and higher in amount than it should be. This issue is discussed below because it is determined that the conversion of the UCB benefits in computing the OI was incorrect.

BEM 505 provides instruction regarding overissuances and directs:

If an overissuance did occur, see BAM 700 for instructions. **Use actual income instead of projected income when processing a budget for a past month, when that income source is the reason the OI occurred. Convert the income to a standard monthly amount, when appropriate.**

Note: For FAP overissuances only, income is **not** converted to a monthly amount when an overissuance occurred in the benefit month because:

- The client failed to properly report income, or
- The department failed to act timely on income learned of via a tape match. BEM 505, p. 14.

In this case, the Respondent failed to report the unearned UCB income, and the Department's UCB interface did not work properly; the actual income for the past month was known; and on both of the Unemployment Compensations searches provided in evidence and used to determine UCB received it also advised that the UCB benefits were exhausted and thus actual income was known and quantifiable. (Exhibits D and E.) Under these facts, it is determined that it is not appropriate to convert the income to a standard

monthly amount. Normally, unemployment benefits as unearned income are not converted when computing FAP benefits. In addition, to not convert these benefits is consistent with policy which addresses determining budgetable income for client error.

The policy found in BAM 715 provides:

If improper reporting or budgeting of income caused the overissuance, use actual income for that income source. Bridges converts all income to a monthly amount.

Exception: For FAP only, do not convert the averaged monthly income reported on a wage match.

Thereafter, both examples provided by policy in BAM 715 address treatment of unreported **earned** income:

Examples:

- Randy and Andi Andrews both started work. They reported Randy's job but did not report Andi's job. For the corrected calculation, use actual income for Andi and the projected income already budgeted correctly for Randy.
- Minnie and Mickey receive FIP with their three children. Mickey has reported his employment at Disney Corp. They failed to report that one of the children left five months ago to go live with his mother, Mickey's ex-wife. The corrected month budgets will use the income already projected properly for Mickey, but remove the child from the household size.

FAP Only

For client error overissuances due, at least in part, to failure to report earnings, do **not** allow the 20 percent earned income deduction on the unreported earnings. BAM 715 (January 1, 2016), p. 8.

The reason Bridges converts the income is because it is earned income and as required by BEM 505, must be converted.

In conclusion, it is determined that the OI income from UCB was not properly determined in accordance with Department policy for the reasons set forth above. Converting UCB benefits results in the Department attributing more income to the Respondent's than they actually received and penalizes the Respondent by inflating unearned income that is quantifiable and known.

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 \$ [REDACTED]


DECISION AND ORDER

Accordingly, the Department is **REVERSED**.

The Department shall delete the FAP overissuance.

IT IS SO ORDERED.

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]

Petitioner

[REDACTED]

[REDACTED]