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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: June 28, 2017
MAHS Docket No.: 17-002741-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

AMENDED 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 Petitioner was represented by herself.

At the conclusion of the hearing, a Hearing Decision was issued by Administrative Law Judge Lynn M. Ferris and mailed on [REDACTED], which is hereby **AMENDED** to correct the Conclusions of Law and Decision and Order.

ISSUE

Did Petitioner 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. All Findings of Fact contained in the original hearing decision dated [REDACTED], remain unchanged and are incorporated herein by reference.
2. On [REDACTED], ALJ Ferris issued a hearing decision finding that the Department **did not** establish an FAP benefit OI to Petitioner totaling \$ [REDACTED]

3. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Department's request for rehearing/reconsideration disputing the finding that the OI was not properly calculated.
4. On [REDACTED], the Supervising Administrative Law Judge, Lauren G. Van Steel, issued an Order Granting Request for Reconsideration finding that the undersigned had misapplied the manual policy with respect to the FAP OI calculation and returned the matter to the undersigned for the issuance of an Amended Hearing Decision.

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 Petitioner completed and returned a redetermination on [REDACTED], for an FAP group size of [REDACTED]. The redetermination advised the Department that Petitioner's FAP group had no income, and she and her spouse were seeking Unemployment Compensation Benefits (UCB) and employment. (Exhibit H.) Thereafter, the Petitioner and her spouse both began receiving UCB. The Department issued a Notice of Case Action on [REDACTED], advising Petitioner 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 Petitioner'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 Petitioner's case. The Department seeks recoupment of \$ [REDACTED] in FAP benefits overissued to the Petitioner.

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] and ending with [REDACTED]. (Exhibit C.). The budgets were reviewed at the hearing and are determined to be correct. It is determined that the Department correctly converted the unemployment income received 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 weekly income by 2.15. Normally, when determining income received less than monthly, 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.

Stable and Fluctuating Income

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- Multiply weekly income by 4.3.
- Multiply amounts received every two weeks by 2.15.
- Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month. BEM 505, p.9

The UCB benefits that were received in this case were paid biweekly for the Petitioner's spouse in the amount of \$ [REDACTED] (Exhibit D.) The UCB that were received by Petitioner were paid biweekly in the amount of \$ [REDACTED] for [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]; and \$ [REDACTED] for [REDACTED]. (Exhibit E.) It should be noted that UCB benefits are unearned income. The gross biweekly UCB for Petitioner's spouse is \$ [REDACTED] ($\$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED]$). When the benefits are converted as required by Department policy, the income becomes $\$ [REDACTED] \times 2.15 = \$ [REDACTED]$ (See Exhibit C, p. 8.) The same calculation is also made for the Petitioner's unearned income from UCB ($\$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED]$ and when benefits are converted, $\$ [REDACTED] \times 2.15 = \$ [REDACTED]$ (See Exhibit C, p. 9.) For [REDACTED]; the Petitioner's UCB benefits were $\$ [REDACTED] + \$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED] \div 3 = \$ [REDACTED] \times 2.15 = \$ [REDACTED]$ as converted.

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 Petitioner never reported the unearned UCB income; and the Department's UCB interface did not work properly; the UCB income for the period of the OI was determined in part based upon the UCB searches provided in evidence and used to determine UCB received. The amount received biweekly as shown in the UCB searches for the OI period in question were not disputed by Petitioner. The UCB searches also advised that the UCB benefits were exhausted. (Exhibits D and E.) Under these facts, it is determined that it is appropriate to convert the income to a standard monthly amount.

The policy found in BAM 705 Agency Error Overissuances provides:

FIP, SDA, CDC and FAP

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.

Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 705 p. 9

Based upon the above requirements, it is necessary to convert the unemployment benefit income when calculating an Agency Error OI because it is received biweekly; and it was not income derived from a wage match.

In conclusion, it is determined that the OI income from UCB was properly determined in accordance with Department policy for the reasons set forth above and has established an OI in the amount of \$ [REDACTED]


DECISION AND ORDER

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 Petitioner totaling \$ [REDACTED]

Accordingly, the Department is AFFIRMED.

The Department is ORDERED to initiate recoupment/collection procedures for an OI in the amount of \$ [REDACTED] 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.

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]

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