



RICK SNYDER  
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 30, 2017  
MAHS Docket No.: 17-006655  
Agency No.: [REDACTED]  
Petitioner: DHHS  
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, 42 CFR 431.230(b), 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], [REDACTED], Recoupment Specialist; and [REDACTED], Hearings Facilitator. Respondent was present for the hearing and represented 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 an ongoing recipient of FAP benefits from the Department.
2. On [REDACTED], the Department sent Respondent a Notice of Overissuance (OI notice) informing her of an FAP OI for the period of [REDACTED] due to agency error. [Exhibit A, pp. 54-58.] The OI notice also indicated that the OI balance was \$ [REDACTED] based on Respondent's income was not correctly budgeted. [Exhibit A, p. 54.]
3. During the alleged OI period, Respondent was a simplified reporter.

4. On [REDACTED], Respondent filed a hearing request, protesting the Department's action. [Exhibit A, p. 59.]

### **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 (October 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 had erred when making a determination for FAP benefits. [Exhibit A, p. 1.] The Department testified that the auditor discovered that the Department did not use the correct Retirement, Survivors, and Disability Insurance (RSDI) amount that Child A (date of birth: [REDACTED] received. [Exhibit A, pp. 1 and 25-27.] The Department testified that the auditor also found that the Department did not use the correct child support income that

Respondent had received. [Exhibit A, pp. 1 and 28.] The Department testified that the auditor also found that the redetermination was not processed in a timely manner. [Exhibit A, p. 1.] Based on the OQA findings, the Department seeks an agency error overissuance and recoupment of \$ [REDACTED] of Respondent's FAP benefits for the period of [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. 2. Quality Control (QC) review findings of active cases determine the incidence and dollar amounts of errors. BAM 320, p. 2. 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. 3.

As part of the evidence record, the Department presented budgets for the period of [REDACTED], in order to show how it calculated the OI. [Exhibit A, pp. 35-53.] For example, the OI budgets would show the RSDI income that the Department argued should have been calculated for Child A. However, during the hearing, it was determined that Respondent was a simplified reporter during the alleged OI period, which the Department did not dispute. This is extremely important to know because policy is applied differently to simplified reporters as compared to change reporters. See BAM 105 (April 2016), p. 11.

Food assistance groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (December 2013), p. 1.

Simplified reporting (SR) groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. BAM 200, p. 1. **No** other change reporting is required. BAM 200, p. 1.

If the group has an increase in income, the group must determine their total gross income at the end of that month. BAM 200, p. 1. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, p. 1. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200, p. 1.

Note, changes known to the Department must be acted on even though the client is required to report only if the group's total gross income exceeds the SR income limit for their group size. BAM 200, p. 1.

SR does not change reporting requirements for any other program. BAM 200, p. 1. The group is still assigned to SR if the person with earned income is a disqualified member. BAM 200, p. 1.

The income limit is 130 percent of the poverty level based on group size. BAM 200, p. 2. To determine the group's SR income limit, all eligible members of the FAP group are counted. BAM 200, p. 2.

Respondent's applicable group size in this case is two. RFT 250 indicates that the SR income limit for a group size of two is \$ [REDACTED] effective [REDACTED], and \$ [REDACTED] effective [REDACTED]. RFT 250 (October 2015 and October 2016), p. 1.

Additionally, policy states at the only client error overissuances related to SR that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200, p. 5. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, pp. 5-6. SR does not affect client errors that occur at application and redetermination. BAM 200, p. 6. SR does not affect the determination of agency error overissuances. BAM 200, p. 6.

For OQA and SR, to review a case under SR rules rather than change reporting rules, the following must be true: (i) the case must have had earned income when it was put into SR; (ii) the case must be an SR eligible group; see Who is Not Eligible for SR in this item; and (iii) the benefit period must be properly set; see Assigning Benefit Periods in this item. BAM 200, p. 6.

After reviewing the OI budgets, the undersigned questioned the Department as to the accuracy of the budgets because Respondent was an SR and her income never exceeded the income limits, even when factoring in the recalculated RSDI/child support incomes. The Department testified as long as Respondent's income did not go over the SR limits, she was free; and the Department did not take this into consideration when completing the budgets. As a result, the Department indicated that it erred in the calculation of the OI budgets. Therefore, because the Department failed to satisfy its burden of showing that it properly calculated the OI budgets, it cannot establish its burden of showing that an agency error overissuance is present in this case. See BAM 700, p. 1; and BAM 705, pp. 6 and 8. The Department is ordered to delete the OI of FAP benefits in the amount of \$ [REDACTED] for the period of [REDACTED] [REDACTED] and cease any recoupment action.


**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 \$ [REDACTED] for the period of [REDACTED].

Accordingly, the Department is **REVERSED**.

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

EJF/jaf



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**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

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]

**DHHS**

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