



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 29, 2018
MAHS Docket No.: 17-015943
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on January 25, 2018, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor, and [REDACTED], Overpayment Specialist.

ISSUE

Did the Department properly calculate an Overissuance (OI) of the Food Assistance Program (FAP) for the period from July 2016 through October 2016?

FINDINGS OF FACT

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

1. Petitioner was an ongoing recipient of the FAP in 2016.
2. In May of 2016, Petitioner timely reported the start of new employment.
3. Despite several reminders from Petitioner, the Department did not process the change in employment and income until September 2016.
4. From July 2016 through October 2016, Petitioner received \$ [REDACTED] in FAP benefits each month.

5. On November 1, 2016, the change in employment and income became effective and Petitioner's FAP case was closed due to being over the income limit.
6. On November 2, 2017, the Department issued a Notice of Overissuance for a total OI of \$ [REDACTED] for July 2016 through October 2016 due to agency error.
7. On December 15, 2017, Petitioner filed a request for hearing disputing the Department's assessment of an OI.

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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

In this case, the Department alleges an OI based upon Department error for the period between July 2016 and October 2016. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. The amount of the overissuance is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 700, p. 1. Client and Agency errors are not pursued if the estimated amount is less than \$ [REDACTED] per program. BAM 700, p. 9; BAM 705 (January 2016), pp. 1, 6. An agency error is caused by incorrect actions (including delayed or no action) by the Department staff or Department processes. BAM 705, p. 1. The OI period begins the first month when benefits issuance exceeds the amount allowed by policy, or 12 months before the date the issuance was referred to the Recoupment Specialist (RS), whichever 12-month period is later. BAM 705, p. 5. If improper budgeting of income caused the OI, the actual income for the past OI month from the same source should be used. BAM 705, p. 8.

In support of its alleged Agency error OI, the Department presented a Verification of Employment from May 15, 2015, for a company called [REDACTED] located on [REDACTED]. The document indicates that Petitioner received \$ [REDACTED] bi-weekly in wages. The Department also provided a W-2 Wage and Tax Statement from 2016 for Petitioner from a business called [REDACTED] located at [REDACTED]. The W-2

shows that in 2016, Petitioner had total wages of \$ [REDACTED]. Finally, the Department provided OI budgets for July 2016 through October 2016. The budgets show that in each month the Department attributed \$ [REDACTED] in wages bi-weekly to Petitioner's earned income and made no other changes to the budgets.

Based upon the evidence presented, it is unclear exactly how much money Petitioner received in wages from his employer beginning in May 2016. Both parties testified that Petitioner had begun new employment in May 2016. The verification of employment provided for the hearing is from May 2015. Therefore, the information contained in the verification is outdated and inapplicable in this case. Additionally, the W-2 from 2016 lists a different business name, different address, and total wages for the year which do not amount to \$ [REDACTED] bi-weekly if the Petitioner began his employment in May 2016. Without some additional evidence to support its finding of \$ [REDACTED] bi-weekly in earned income for Petitioner during the OI period, the Department has not met its burden of proof.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the OI amount of \$ [REDACTED] for the period between July 2016 and October 2016.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Delete and cease any recoupment or collections efforts related to this case.
2. If the Department recouped or collected any of the alleged FAP OI, issue supplements or refunds to Petitioner in the amount recouped and/or collected in accordance with Department policy.



Amanda M. T. Marler

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

AM/

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]
[REDACTED]

DHHS Department Rep.

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
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