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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: March 8, 2018
MAHS Docket No.: 16-019551
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 March 5, 2018, from Detroit, Michigan. The Petitioner was represented by Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Overpayment Specialist.

ISSUE

Did the Department properly establish that Petitioner had been overissued Food Assistance Program (FAP) benefits in the amount of [REDACTED] from June 1, 2009 through August 31, 2009?

FINDINGS OF FACT

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

1. On November 25, 2008, Petitioner applied for FAP benefits.
2. In the application, Petitioner listed that she was the only person in the household.
3. Notwithstanding this, the Department approved Petitioner for FAP benefits in the amount of [REDACTED] from June 1, 2009 through August 31, 2009 with a group size of three.
4. The Department realized its error and corrected Petitioner's benefit amount to reflect that of a group size of one effective September 1, 2009.

5. Despite discovering the error in approximately August 2009, the Department did not issue a Notice of Overissuance to Petitioner until May 10, 2016.
6. The Notice of Overissuance notified Petitioner that the Department was seeking recoupment in the amount of [REDACTED] for FAP benefits issued from June 1, 2009 through August 31, 2009.
7. On June 7, 2016, Petitioner filed a Request for Hearing disputing the Department's action.

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.

Additionally, an **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. For FAP benefits, an **OI** is also the amount of benefits trafficked (traded or sold). BAM 700 (January 2009), p. 1. The **Discovery Date** is determined by the Recoupment Specialist (RS) for a client or agency error. This is the date the OI is known to exist and there is evidence available to determine the OI type. For an Intentional Program Violation (IPV) the Office of Inspector General (OIG) determines the discovery date. This is the date the referral was sent to the prosecutor or the date that OIG requested an administrative disqualification hearing. *Id.*

Further, an agency error OI is caused by incorrect action (including delayed or no action) by DHS or DIT 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 or machine errors occurred.
- Information was not shared between department divisions (services staff, Work First! agencies, etc.).
- Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.). BAM 700, p. 3.

When a potential OI is discovered, the Department is required to:

1. Take immediate action to correct the current benefits (See BAM 220, Case Actions, for change processing requirements).
2. Obtain initial evidence that an OI potentially exists.
3. Determine if the OI was caused by department, provider or client actions.
4. Refer any OIs needing referral to the RS within **60 days** of suspecting an OI exists.

Further, within **60 days** of suspecting an OI exists, the Department must complete a DHS-4701, Overissuance Referral, and refer the following OIs to the RS for your office:

- All client errors.
- All suspected IPV errors.
- All CDC provider errors.
- All agency errors over \$500. BAM 700, pp. 7-8.

Additionally, within **60 days** of receiving the referral, **the RS must** [Emphasis added]:

- Determine if an OI actually occurred, **and**
- Determine the OI types.

Also, within **90 days** of determining an OI occurred, the RS must:

- Obtain all evidence needed to establish an OI.
- Calculate the OI amount. Establish the OI discovery date.
- Send a DHS-4358A, B, C & D to the client.
- Enter the FIP, SDA, CDC and/or FAP OIs on BRS.
- Refer all suspected IPV OIs to OIG for investigation.
- Send a DHS-4701, Overissuance Referral Disposition, to the specialist explaining the final disposition of the OI. BAM 700, pp. 8-9.

However, it should be noted that the agency error threshold was lowered to [REDACTED] from [REDACTED] with a retroactive effective date of August 1, 2008, until November 30, 2012. BAM 700 (October 2016), p. 5.

In this case, the Department acknowledged that the OI was caused by Agency error. The OI amount requested by the Department is [REDACTED]. In accordance with Department policy, the Recoupment Specialist (now known as Overpayment Specialist) was required, within 60 days of receiving the referral, to determine whether an OI actually occurred and determine the type OI. Further the Recoupment Specialist was required, within 90 days, to send a Notice of Overissuance (DHS-4358A) to the client. The Overpayment Specialist testified that she was experiencing a backlog at the time which caused the case to languish for several years. Because the Department failed to

timely send Petitioner the Notice of Overissuance, it is found that the Department has failed to establish the OI in this matter and is therefore not entitled to recoupment.

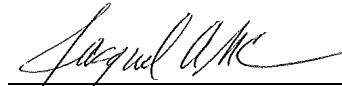
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it failed to determine the OI type within 60 days.

DECISION AND ORDER

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

The Department has failed to timely establish the debt from June 1, 2009 through August 31, 2009 and therefore the request for recoupment is **DENIED**.

JAM/tlf



Jacquelyn A. McClinton
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

Via Email:

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

Petitioner – Via First-Class Mail:

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