



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: June 13, 2018  
MAHS Docket No.: 18-004702  
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 June 13, 2018, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Minnie Egbuonu, Recoupment Specialist, and Melissa Sieman, Office Supervisor.

**ISSUE**

Did the Department properly determine an Agency Error 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. On October 10, 2016, the Department received Petitioner's completed Semi-Annual Contact Report on which she informed the Department that her household income had changed by more than \$ [REDACTED]
2. On October 29, 2016, Petitioner began receiving unemployment benefits.
3. On November 4, 2016, Petitioner began employment with Target Corporation (Employer).
4. On November 10, 2016, Petitioner received her first paycheck from Employer.

5. Petitioner receives fluctuating child support income each month.
6. Despite being informed of the change in income, the Department continued to budget Petitioner's pre-Semi-Annual Contact Report income through at least March of 2017.
7. Petitioner has a lifetime disqualification from the FAP; therefore, the group only includes her two children.
8. On February 1, 2017, the Department created an OI Referral.
9. On April 17, 2018, the Department issued a Notice of Overissuance to Petitioner for the period from December 1, 2016, through March 31, 2017, for an Agency Error OI totaling \$ [REDACTED]
10. On May 11, 2018, the Department received Petitioner's request for hearing disputing the assessment of the 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 Agency Error OI because of the Department's failure to update Petitioner's budgeted income or utilize its resources in determining her resources at the time Petitioner reported a change. The alleged OI is from December 1, 2016, through March 31, 2017, totaling \$ [REDACTED]

When a client group receives more benefits than they are 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 \$250 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. A Client Error occurs when the client gives incorrect or incomplete information to the Department. BAM 700, p. 6.

The OI period begins the first month when a benefit 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. When determining the first month of the OI period for changes reported timely and not acted upon by the Department, the Department must allow time for the 10-day full standard of promptness for change reporting as well as the 12-day full negative action suspense period per BAM 220. BAM 705, pp. 5-6.

Petitioner reported to the Department on her October 10, 2016, Semi-Annual Contact Report that her household gross income had changed by more than \$ [REDACTED]. Therefore, the Department can only seek an OI after application of the 10-day period for change reporting and 12-day negative action suspense period because that is when the Department should have implemented the change in her budget. In this case, the Department properly waited to begin the OI period on December 1, 2016, as that was the first month of benefit issuance after application of the rules. The Department also properly determined that this case involved an Agency Error and not a Client Error based upon the Department's failure to follow the appropriate procedures after Petitioner's reported change.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (January 2016), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. 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.

The Department presented OI budgets for each month of the OI period. The only changes made from the original FAP budget to the OI budget was the calculation of Petitioner's income to reflect income actually received. The only exception to this procedure was in December 2016 when the Department used the previously budgeted child support income rather than the actual child support income. This was an error on the part of the Department. However, in reviewing the December 2016 OI budget, even without consideration of the child support income, Petitioner's household income of \$ [REDACTED] is over the gross income limit of \$2,670.00. RFT 250 (October 2016), p. 1.

It is noted that in each of the budgets, the Department improperly listed the gross income limit. Policy provides that all applicants and recipients are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS). BEM 213 (January 2016), p. 1. If the group's gross income is at or below 200 percent of the federal poverty level and they meet the asset test, the group is categorically eligible for FAP benefits. *Id.* Categorical eligibility does not mean applicants automatically receive FAP

as clients must still meet all of the other program requirements. *Id.* In this case, the Department did not provide the 200% gross income limit to Petitioner in any of the OI months and instead applied the 130% gross income limit. As shown by policy, the Petitioner's group should have been considered under the 200% gross income limit. BEM 213, p. 1.

For the remainder of the OI period, January 2017 through March 2017, Petitioner's income fell below the 200% gross income limit. Since the Department improperly applied the gross income limit, the Department failed to consider the remainder of Petitioner's budgetable items for the net income budget and has not properly calculated Petitioner's total OI.

Therefore, the only month in which the Department has shown that Petitioner had an OI of FAP benefits was December 2017 when the group's gross income was over the FAP gross income limit. Since the OI for December 2016 was greater than \$250.00, the Department may still attempt to recoup or collect the OI of \$ [REDACTED] for December. BAM 700, p. 9.

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 acted in accordance with Department policy when it determined an OI for December 2016, but failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined an OI for January 2017 through March 2017.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the OI for December 2016 and **REVERSED IN PART** with respect to the OI for January 2017 through March 2017.

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. Begin recoupment/collections of the December 2016 OI of \$ [REDACTED]
2. Delete and cease recoupment/collections of the January 2017 through March 2017 OI totaling \$ [REDACTED]

3. If the Department recouped or collected any of the alleged FAP OI greater than \$ [REDACTED] issue supplements or refunds to Petitioner in the amount of the excess recoupment or collection in accordance with Department policy.



AM/

**Amanda M. T. Marler**

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) 763-0155; 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**

Carisa Drake  
MDHHS-Calhoun-Hearings

**DHHS Department Rep.**

MDHHS-Recoupment

**Petitioner**

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M Shumaker  
A Marler  
MAHS