



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 14, 2018
MAHS Docket No.: 18-004705
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 Egbonu, Recoupment Specialist, and Susan Laws, General Office Assistant.

ISSUE

Did the Department properly determine an Agency Error Overissuance (OI) for Petitioner's 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 28, 2016; February 21, 2017; and February 26, 2018; Shelter Verification forms were submitted to the Department on behalf of Petitioner each listing Petitioner's rental expense as well as an additional \$15.00 air conditioning monthly charge but noting that all other utilities were included in Petitioner's monthly rent.
2. On April 24, 2018, an Overissuance Referral was created within the Department.
3. On April 25, 2018, the Department issued a Notice of Overissuance indicating Petitioner had received an Agency Error OI from June 1, 2017, through May 31,

2018, in the amount of \$ [REDACTED] because the Agency failed to remove the Heat and Utility (H/U) Standard from Petitioner's FAP budget.

4. On May 15, 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 is asserting that Petitioner received an OI of benefits due to Agency Error for the period from June 1, 2017, through May 31, 2018, in the amount of \$ [REDACTED] because the Department failed to remove the H/U Standard from consideration in Petitioner's FAP budget.

The H/U standard covers all heat and utility costs including cooling, except actual utility expenses, for example, installation fees and other similar items. BEM 554 (January 2017), p. 14. FAP groups that qualify for the H/U Standard do not receive any other individual utility standards. BEM 554, p. 15. Individuals whose rent includes the cost of electricity and heat are not eligible for the H/U Standard. In situations where the FAP group pays for cooling (including room air conditioners) separately from their other utility expenses and rent, these groups are eligible for the H/U standard if they verify that they have the responsibility to pay for non-heat electric. BEM 554, p. 17. Acceptable verification sources include, but are not limited to:

- Current bills or a written statement from the provider for electric.
- Collateral contact with the electric provider.
- Cancelled checks, receipts or money order copies, if current.
- DHS-3688, Shelter Verification form.
- Current lease.

In situations where the FAP group has electricity included in their rent or fees, these groups are only eligible for the H/U Standard if their landlord bills them separately for

excess cooling. BEM 554, pp. 19-20. Acceptable verification includes, but are not limited to,

- Current bills or a written statement from the landlord.
- Collateral contact with the landlord.
- Cancelled checks, receipts or money order copies, if current and explain minimum information to identify the expense, amount, address, the provider, and the name of the person paying the expense.

BEM 554, p. 20. In this case, the Assistant Manager and Community Manager have verified on three separate Shelter Verifications that Petitioner is responsible for a separate air-conditioning charge, which is a \$15.00 fee above his regular rental rate. Petitioner credibly testified that he has the right to opt of the air-conditioning option and that it is not part of his regular rent. Furthermore, if Petitioner opts for the air conditioning, he is required to pay an additional \$15.00 per month. The Department never attempted to clarify the circumstances with Petitioner's air-conditioning expense despite the information presented on the Shelter Verifications. Given these circumstances, Petitioner is eligible for the H/U standard. BEM 554, pp. 19-20.

Since each month of the OI period was assessed solely because of the removal of the H/U standard and there was no other reason for the assessment of the OI, the Department has not established an OI of benefits for Petitioner's FAP benefits.

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 assessed an OI of Petitioner's FAP benefits based on the Department's belief that the H/U standard had been improperly considered in Petitioner's FAP budget.

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 recoupment or collections of the alleged OI for the period from June 2017 through May 2018 in the amount of \$ [REDACTED]

2. If any recoupment or collections have already been completed, refund or supplement to Petitioner the value of any of the previously collected recoupments or collections 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

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

M Shumaker
A Marler
MAHS