



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: September 10, 2018  
MAHS Docket No.: 18-007906  
Agency No.: ██████████  
Petitioner: ██████████

**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 September 6, 2018, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Denise Beard, Recoupment Specialist, and Dionere Craft, Hearing Facilitator.

**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. Petitioner is an ongoing FAP recipient.
2. Petitioner received \$ ██████████ per month in FAP benefits from November 2017 through May 2018.
3. On May 9, 2018, the Department received a Wage Verification for Petitioner's employment with ██████████ ██████████ ██████████ ██████████ ██████████ (Employer) with associated paystubs for the pay periods beginning from June 17, 2017, through April 20, 2018, with a layoff between July 1, 2017, and August 11, 2017.

4. During the layoff, Petitioner advised her caseworker that she would be returning to work but does not remember whether she advised the Department of the actual start date; and she never provided proof of income after her return to employment.
5. On June 20, 2018, the Department received requested earnings verification information from Employer for pay dates May 11, 2018, and May 24, 2018.
6. On May 25, 2018, an OI Referral was made to the Recoupment Specialist.
7. On June 21, 2018, the Department issued a Notice of Overissuance informing Petitioner that she received more benefits than she was entitled to receive for the period from November 1, 2017, through May 31, 2018, in the amount of \$[REDACTED] in the FAP as a result of an Agency Error but also indicated that she did not report her return to work.
8. On July 27, 2018, the Department received Petitioner's hearing request disputing 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 alleged an OI of FAP benefits as a result of an "Agency Error" but also noted that Petitioner failed to report her return to work. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 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. 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. In either scenario, Agency Error versus Client Error, the Department must still attempt to collect or recoup the OI.

In the comments on the summary page of the OI budgets, the Department classifies the OI as a result of Agency error. The Department “was aware that customer was expected to return to work in the fall and failed to follow up...” However, Petitioner still failed to provide any proof of the change in her income. Policy provides that clients are required to report changes in circumstances which affect eligibility within 10 days of the change itself. BAM 105 (October 2016), p. 11. Changes affecting income must be reported within 10 days of receiving the first payment reflecting the change. *Id.* Therefore, Petitioner’s failure to provide the exact date of her return to work, the date of her first paycheck, or the amount of her first paycheck resulted in an OI. While the Department should have followed up with Petitioner after she informed them of her impending return to work, Petitioner still had an obligation to report the change in income within 10 days after receipt of her first check. Therefore, any overissuance in this case is characterized as Client Error, not an Agency Error.

In order to establish the OI, the Department provided a budget reflecting Petitioner’s previous benefit calculation showing no income from employment, but instead unearned income from Unemployment Compensation Benefits (UCB). In addition, the Department provided recalculated budgets to reflect what Petitioner’s benefit rate should have been if she had properly reported her income and the Department removed the UCB. No other changes were made to the recalculated OI budgets.

In determining when to start the OI period, the Department must follow policy. 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. To determine the first month of the OI period the Department allows time for: (i) the 10-day client reporting period, per BAM 105; (ii) the 10-day full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the 12-day full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715, p. 5. Since Petitioner received her first paycheck as of September 1, 2017, after application of the above rules, the Department properly began the OI period as of November 1, 2018.

In reviewing the budgets, 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. In addition, the 20% earned income deduction is not provided when determining an OI due to failure to report earned income. BEM 556 (July 2013), p. 3.

After proper consideration of Petitioner’s income and removal of the UCB, the Department properly provided Petitioner the Standard Deduction of \$160.00 for a group size of one. In addition, the Department correctly calculated Petitioner’s excess shelter

deduction by adding her housing expense and heat and utility standard together then subtracting half of Petitioner's adjusted gross income to achieve the Excess Shelter amount. BEM 556, pp. 4-5. Once the excess shelter amount was calculated, it was properly deducted from Petitioner's adjusted gross income to achieve Petitioner's net income. *Id.*

In reviewing the OI budgets, the Department failed to consider the net income limit of \$1,005.00. RFT 250 (October 2017), p. 1. Individuals who have income greater than the net income limit after consideration of all applicable expense are not eligible for FAP benefits. BEM 550 (January 2017), p. 1. In each month of the OI period, the Department allotted a benefit to Petitioner of \$[REDACTED] per month, except March 2018. However, in each of these months, Petitioner's net income was greater than the net income limit. Therefore, she should be ineligible for benefits in each month. This error in calculating the OI is in the Petitioner's favor, the Department had the opportunity to correctly calculate the OI, and the Department only requested a total OI of \$[REDACTED] based upon eligibility for \$[REDACTED] in FAP benefits per month except March 2018. In March 2018, the Department properly calculated the OI budget and determined that Petitioner was ineligible for FAP benefits because she had income greater than the gross income limit of \$2,010.00. RFT 250, p. 1.

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 that Petitioner had an OI of FAP benefits, but the FAP OI is limited to the amount the Department requested at \$[REDACTED]

### **DECISION AND ORDER**

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

The Department is **ORDERED** to initiate recoupment/collection procedures for the amount of \$[REDACTED] in accordance with Department policy.

AMTM/



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**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**

Clarence Collins  
MDHHS-Wayne-55-Hearings

**DHHS Department Rep**

MDHHS-Recoupment

**Petitioner**

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

M Shumaker  
A M T Marler  
MAHS