



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: January 31, 2017  
MAHS Docket No.: 16-017686  
Agency No.: [REDACTED]  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

### **HEARING DECISION**

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on January 17, 2017, from Detroit, Michigan. The Department was represented by Latrisha Cook, Recoupment Specialist. The Respondent was represented by herself.

### **ISSUE**

Did Respondent receive an 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. Respondent was a recipient of FAP benefits from the Department.
2. The Department alleges Respondent received an FAP OI during the period November 11, 2014, through September 30, 2015, due to **Respondent's** error. The Department ended the OI period based upon the Respondent reporting her son [REDACTED] no longer was in the house in September 2015. Exhibit B and Exhibit E.
3. The Respondent completed a Redetermination on September 28, 2015, which was sent to her on September 14, 2015. In the Redetermination, the Respondent reported to the Department that her son [REDACTED] had moved out of the home and noted unsure, moved months ago. Exhibit E.

4. In a Redetermination completed for October 2014, the Respondent advised the Department that her son [REDACTED] was residing in the household and that he bought and prepared food with the Respondent, his mother. Exhibit D.
5. The Department alleges that Respondent received \$3,807 OI that is still due and owing to the Department.
6. The Department sent the Respondent a Notice of Overissuance dated November 3, 2016, based upon unreported earnings by Respondent. Exhibit A.
7. On March 23, 2015, the Respondent completed a Semi-Annual Contact Report dated March 2, 2015, advising the Department that Respondent reported that her son, [REDACTED] no longer lived in her household. Exhibit G.
8. On [REDACTED], 2016, the Respondent requested a hearing protesting the Department's actions.

### **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), and Department of Health and Human Services Reference Tables Manual (RFT).

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 to .3015.

Additionally, in this case the Department seeks to recover an OI it alleges that Respondent received of FAP benefits due to failure to report earnings for her son [REDACTED]. The Department presented evidence of the FAP benefit amount Respondent received during the OI period. Exhibit C. The Department also presented evidence from the Work Number to establish the Respondent's son's income (wages from employment). Exhibit F. At the hearing, the Department discovered that the Respondent reported that her son [REDACTED] moved out of the house in a Semi-Annual Contact Report which the Department had not been previously aware of until Respondent reported its existence at the hearing. Exhibit G. The Department conceded that once it received the Semi-Annual Report, on March 23, 2015, it was Agency Error by the Department to not remove the Respondent's son from the FAP group for the months in the OI period once the son was reported no longer in the FAP group. Exhibit G. For the months prior to April 2015, the OI resulted from client error due to failure to report Respondent's son's

income from ██████████ during the time he was reported in the FAP group, November 11, 2014, through March 31, 2015.

For the period November 11, 2014, through March 31, 2015, the Respondent failed to report that her son, who was a FAP group member, had earnings from employment. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 1, 2016), pp. 11-12. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 11.

Income reporting requirements are limited to the following:

- Earned income:
  - Starting or stopping employment.
  - Changing employers.
  - Change in rate of pay.
  - Change in work hours of more than five hours per week that is expected to continue for more than one month.

BAM 105, p. 11.

Other changes must be reported within 10 days after the client is aware of them. BAM 105, pp. 11-12.

Based upon the evidence presented at the hearing the Department correctly determined client error occurred during November 2014 through March 31, 2015.

A **client error** occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department.

A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, **and any of the following occurred:**

- The hearing request is later withdrawn.
- MAHS denies the hearing request.
- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.
- The hearing decision upholds the department's actions; see BAM 600. BAM 700 (October 1, 2016), p. 7.

The Department conceded Agency Error when it failed to remove the Respondent's son [REDACTED] from her FAP group when reported. This continued the FAP Group as a group of four group members when in fact it contained only three members. An **agency error** is caused by incorrect actions (including delayed or no action) by the Michigan Department of Health and Human Services (MDHHS) staff or department processes.

Some examples are:

- Available information was not used or was used incorrectly. BAM 705 (January 1, 2016), p. 1

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. An **overissuance** is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700, (October 1, 2016), pp. 1-2; BAM 705, p. 6.

The Department presented OI budgets for the OI period November 11, 2014, through March 31, 2015. These budgets as presented are correct as the unreported income received by the FAP group caused the Respondent to be ineligible to receive any FAP benefits due to the group income exceeding the net income limit. Exhibit C and Exhibit H. The unreported income was based upon the Respondent's son's biweekly pays while employed by [REDACTED] beginning November 2014. Exhibit F. The Respondent did not dispute the earnings record, and the pays were correctly identified and included in the OI budgets for the months November 2014 through March 31, 2015.

The Department also presented OI budgets for the period April 2015 through September 2015, which were not correct due to the fact that when they were prepared, the Department was unaware of the Respondent's Semi-Annual Report advising the Department that Respondent's son had left the FAP group. The Department's budgets incorrectly included the son's income when calculating the OI and kept the FAP group size as four. See Exhibit I. The Department also kept the Respondent's son in the FAP group as a member. Exhibit I. Had Agency Error been discovered, the Department should have removed the son's income and reduced the group size. Given the evidence presented, the Department did not establish the correct OI amount for the months of April 2015 through September 2015 and is not entitled to recoup any FAP benefits for this period as it did not meet its burden of proof to demonstrate the correct OI amount. Therefore, the Department is not entitled to recoup six months of FAP OI for a total of \$2,112. ( $\$352 \times 6 = \$2,112$ ). Exhibit C, p. 3.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish an FAP benefit OI to Respondent totaling \$1,695.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did not** establish a FAP benefit OI to Respondent totaling \$2,112.

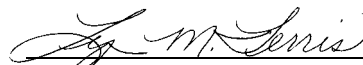
### **DECISION AND ORDER**

Accordingly, the Department is **AFFIRMED IN PART** with respect to OI for the period November 1, 2014, through March 31, 2015, and **REVERSED IN PART** with respect to OI for the period April 1, 2015, through September 30, 2015.

The Department is ORDERED to initiate collection procedures for an FAP \$1,695 OI in accordance with Department policy.

The Department is ORDERED to cease collection procedures for the balance of the FAP OI in the amount of \$2,112.

LMF/jaf



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**Lynn M. Ferris**

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

**DHHS**

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**Respondent**

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