



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: October 10, 2018  
MAHS Docket No.: 18-008725  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** John Markey

### **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 October 4, 2018, from Lansing, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Terri Stheiner, Eligibility Specialist, Bruce Walker, Family Independence Specialist, and Rebecca Smalley, Recoupment Specialist. During the hearing, a 69-page packet of documents was offered and admitted as Exhibit A, pp. 1-69.

### **ISSUE**

Did the Department properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup and/or collect?

### **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 submitted to the Department an application for FAP benefits on [REDACTED], 2015. Exhibit A, pp. 52-68.
2. Petitioner reported on the application that she was responsible for \$ [REDACTED] in property taxes. Exhibit A, p. 63.

3. The Department issued to Petitioner FAP benefits throughout the period from April 2016 through March 2017. Exhibit A, pp. 11-12.
4. During that period, the Department calculated Petitioner's monthly FAP amount by including the \$[REDACTED] in taxes as a housing expense when in fact the \$[REDACTED] should have been distributed evenly amongst twelve months. This misapplication of the expense potentially caused Petitioner to receive more benefits than she was entitled to receive.
5. On April 10, 2017, a Department worker forwarded Petitioner's case to Ms. Smalley, the Recoupment Specialist, via an Overissuance Referral. Exhibit A, p. 69.
6. On August 23, 2018, Ms. Smalley determined that an overissuance occurred and that it was due to agency error.
7. On August 23, 2018, Ms. Smalley sent to Petitioner a Notice of Overissuance, DHS-4358-A, along with DHS-4358-B, DHS-4358-C, and DHS-4358-D, informing Petitioner of the alleged overissuance. Exhibit A, pp. 7-8.
8. On [REDACTED] 2018, Petitioner filed with the Department a request for hearing objecting to 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.

In this case, the Department alleges that Petitioner received an overissuance of FAP benefits that the Department is entitled to recoup and/or collect. Petitioner acknowledges that she may have received an overissuance of benefits. However, Petitioner objects to the process employed by the Department in seeking to recoup and/or collect the alleged overissuance.

The Department alleges that Petitioner received an overissuance of benefits due to agency error and seeks to establish a claim against Petitioner. A claim is an amount owed because of benefits that were overpaid. 7 CFR 273.18(a)(1). Federal regulation

directs states to develop and follow their own plan for effective and efficient establishment and processing of claims. 7 CFR 273.18(2).

Pursuant to the federal directive, the Department issued and follows a number of claim-related procedures found within BAM 700 through 725. Under the Department's policies, a claim is defined as the resulting debt created by an overissuance of benefits. BAM 700 (January 2018), p. 1. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700, p. 1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1. There are three types of overissuances: (1) agency error; (2) client error; and (3) intentional program violation overissuances. BAM 700, pp. 4-8.

Recoupment is a Department action to identify and recover a benefit overissuance. BAM 700, p. 2. Thus, in order to initiate the recoupment process, the Department must first establish an overissuance. The process for establishing an overissuance begins with the specialist identifying a potential overissuance. BAM 700, p. 10. Once the specialist identifies a potential overissuance, the specialist is required to immediately correct the current benefits, obtain initial evidence regarding the potential overissuance, determine if the overissuance was caused by the Department or the client's actions, and refer any overissuances needing referral to a Recoupment Specialist within 60 days of suspecting one exists. BAM 700, p. 10. The referral to the Recoupment Specialist is done using a form entitled Overissuance Referral. BAM 700, pp. 10-11.

Within 60 days of receiving the Overissuance Referral, the Recoupment Specialist must do two things: (1) determine if an overissuance actually occurred and (2) determine the type. BAM 700, p. 11. Within 90 days after determining that an overissuance occurred, the Recoupment Specialist must, among other requirements, send to the client a Notice of Overissuance, DHS-4358-A, along with DHS-4358-B, DHS-4358-C, and DHS-4358-D informing the client of the alleged overissuance. BAM 700, pp. 11-12. Thus, in order to establish an overissuance, Department policy allows a maximum of 150 days from the date the specialist referred the suspected overissuance to the Recoupment Specialist to the date the Recoupment Specialist sends to the client a Notice of Overissuance, DHS-4358-A, along with DHS-4358-B, DHS-4358-C, and DHS-4358-D informing the client of the alleged overissuance. BAM 700, pp. 10-12. Once an overissuance has been established, the Department may collect the overissuance through any number of methods. BAM 725 (October 2017).

In this case, the Department alleges that Petitioner received an overissuance of benefits due to agency error and seeks to establish a claim against Petitioner. During the hearing, the Recoupment Specialist testified that she received the Overissuance Referral on or about April 10, 2017. Under BAM 700, the Recoupment Specialist had a total of 150 days to investigate the matter, determine the overissuance type and amount, and send to Petitioner the Notice of Overissuance. The Notice of Overissuance in this matter was not sent until August 23, 2018, more than 16 months after receipt of the Overissuance Referral.

The process employed by the Department to establish the alleged overissuance was fatally flawed. BAM 700 through BAM 725 provide the process by which the Department may establish an overissuance. That is the only process provided by Department policy for establishing overissuances. The Department missed critical deadlines involved with the process. Upon receiving the Overissuance Referral, the Recoupment Specialist had 150 days to issue the Notice of Overissuance. Once that 150-day time frame elapsed, the Recoupment Specialist was time-barred from issuing the Notice of Overissuance. Because the Notice of Overissuance was issued after that 150-day time frame, it is set aside as untimely issued in violation of Department policy.

### **DECISION AND ORDER**

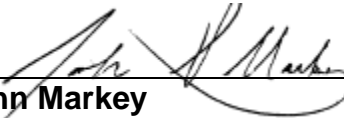
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it sought to establish an overissuance of benefits to Petitioner.

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 the alleged overissuance from Petitioner's case.

IT IS FURTHER ORDERED that the Department is prohibited from seeking to establish an overissuance with respect to Petitioner's FAP benefits issued from April 1, 2016, through March 31, 2017.

JM/hb

  
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**John Markey**  
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**

Lindsay Miller  
125 E. Union St 7th Floor  
Flint, MI 48502

**DHHS Department Rep.**

MDHHS-Recoupment  
235 S Grand Ave  
Suite 1011  
Lansing, MI 48909

Genesee County (Union), DHHS

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**Petitioner**

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