



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 21, 2018
MAHS Docket No.: 18-011062
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 December 5, 2018, from Detroit, Michigan. Petitioner represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Recoupment Specialist.

ISSUE

Did the Department properly determine that Petitioner was overissued Family Independence Program (FIP) benefits in the amount of \$8,013.00 from January 1, 2016 through July 31, 2017 and Food Assistance Program (FAP) benefits in the amount of \$8,503.00 from January 1, 2016 through October 31, 2017 due to client error?

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 [REDACTED], 2015, Petitioner submitted an application for State Emergency Relief (SER) in which he indicated that he was no longer working.
2. On March 23, 2016, Petitioner submitted a Redetermination in which he indicated that no one in the household had income.
3. On April 3, 2017, Petitioner submitted a Redetermination in which he indicated that no one in the household had income.

4. On August 28, 2017, Petitioner submitted a Redetermination in which he indicated that he was self-employed and earned \$██████ in gross earnings; Petitioner did not specify whether he earned this amount weekly, monthly or annually.
5. On September 11, 2017, Petitioner submitted his ██████ tax returns and during a telephone conversation with the Department, he indicated that he had been self-employed doing construction work for the previous three years.
6. On November 9, 2017, Petitioner's assigned case worker submitted an overissuance referral.
7. On November 13, 2017, the Department engaged in a telephone discussion with Petitioner in which Petitioner revealed that he had been self-employed for the previous three years.
8. On October 2, 2018, the Department sent Petitioner a Notice of Overissuance which notified him that an overissuance had occurred in the amount of \$8,013.00 relating to FIP benefits received from January 1, 2016 through July 31, 2017.
9. Also, on October 2, 2018, the Department sent Petitioner a Notice of Overissuance which notified him that an overissuance had occurred in the amount of \$8,503.00 relating to FAP benefits received from January 1, 2016 through October 31, 2017.
10. On October 24, 2018, Petitioner filed a Request for Hearing disputing 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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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.

The Department has sought an overissuance in the amount of \$8,013.00 for FIP benefits and \$8,503.00 for FAP benefits. Petitioner conceded that he failed to report his income to the Department. Petitioner explained that when he read the question “does anyone in your household have income,” he interpreted that mean that he was required to select yes only if someone other than himself in the household had income. This explanation is found to be unreasonable given that the questions specifically asked if **anyone** in the household has income. However, under policy, within **60 days** of suspecting an overissuance exists, the Department is required to complete a DHS-4701, Overissuance Referral, and refer the following overissuances to the RS for your office:

- All client and agency errors over \$250.
- All suspected IPV errors.
- All CDC provider errors.

Within **60** days of receiving the referral, the RS must:

- Determine if an overissuance actually occurred, **and**
- Determine the types.

Within **90** days of determining an overissuance occurred, the RS must:

- Obtain all evidence needed to establish an overissuance.
- Calculate the amount.
- Send a DHS-4358A, B, C & D to the client.
- Enter the programs on BRS.
- Refer all suspected IPV overissuances to OIG for investigation.
- Send a DHS-4701A, Overissuance Referral Disposition, to the specialist explaining the final disposition of the error. BAM 700 (October 2016), pp. 10-11.

Additionally, Federal Regulations indicate that a State agency must establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered. 7 C.F.R 273.18(4)(c)(2)(d).

In this case, the assigned case worker discovered on November 13, 2017 during a telephone call with Petitioner that a potential overissuance occurred. The Overissuance Referral contained in the hearing packet is dated November 9, 2017. In the case comments, the assigned case worker specifically indicated that an overissuance referral had been submitted. As such, the last day of the quarter in which the overissuance was discovered was December 30, 2017. The last day of the following quarter was March 31, 2017. The claim was not established by this date. Similarly, the Notice of Overissuance was not sent to Petitioner in accordance with the timeframe outlined in the Department’s policy. As such, it is found that the Department has failed to establish the debt by a preponderance of the evidence.

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 failed to timely establish a claim and timely send the Notice of Overissuance to Petitioner.

DECISION AND ORDER

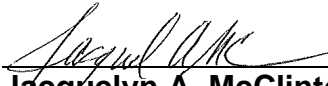
Accordingly, the Department's decision is **REVERSED**.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has not** established that Respondent received an OI of FIP benefits in the amount of \$8,013.00 from January 1, 2016 through July 31, 2017.
2. The Department **has not** established that Respondent received an OI of FAP benefits in the amount of \$8,503.00 from January 1, 2016 through October 31, 2017.

The Department is **ORDERED** to delete the OI and cease any recoupment action.

JAM/tlf



Jacquelyn A. McClinton
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

Via Email:

MDHHS-Wayne-49-Hearings
MDHHS-Recoupment
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
MAHS

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]