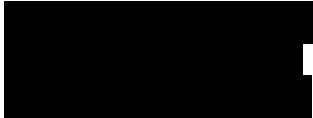




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: October 2, 2017
MAHS Docket No.: 17-011080
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on September 27, 2017, from [REDACTED] Michigan. The Petitioner was represented by her husband, [REDACTED] and Petitioner testified on her own behalf. The Department was represented by [REDACTED] Recoupment Specialist.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits that the Department is required to recoup?

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 July 7, 2016, the Department received Petitioner's application for Food Assistance Program (FAP) benefits as a group of three where Petitioner reported self-employment income. Exhibit A, pp 2-21.
2. Petitioner received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from July 11, 2016, through November 30, 2016. Exhibit A, p 25.
3. Petitioner reported self-employment income in the gross annual amount of \$ [REDACTED] Exhibit A, p 24.

4. On November 1, 2016, the Department initiated a review of Petitioner's benefits for a possible overpayment of Food Assistance Program (FAP) benefits. Exhibit A, p 26.
5. On August 4, 2017, the Department sent Petitioner a Notice of Overissuance (DHS-4358-A) informing her that she had received a \$ [REDACTED] overissuance of Food Assistance Program (FAP) benefits during the period of July 1, 2016, through November 30, 2016. Exhibit A, p 39.
6. On August 15, 2017, the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits. Exhibit A, p 44.

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.

Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. A person who provides child care in his/her home is considered to be self-employed. Rental income is sometimes counted as unearned income and sometimes as self-employment. The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. Department of Human Services Bridges Eligibility Manual (BEM) 502 (July 1, 2017), p 1.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2015), p 1.

On July 7, 2016, the Department received Petitioner's application for FAP benefits where Petitioner reported receiving self-employment income. Petitioner reported self-employment income in the gross annual amount of \$ [REDACTED]

Petitioner received FAP benefits totaling \$ [REDACTED] from July 11, 2016, through November 30, 2016. This was a monthly benefits of \$ [REDACTED] with a prorated benefit of \$ [REDACTED] for the groups 21 days of eligibility in July of 2016.

Due to Department error, the self-employment income Petitioner reported to the Department was not applied towards the group's eligibility for FAP benefits. A \$ [REDACTED] monthly allotment of FAP benefits is the maximum amount of benefits a group of three persons may receive and is granted to households with a net monthly income of \$ [REDACTED] Department of Health and Human Services Reference Table Manual (RFT) 260 (October 1, 2015), p 1.

On November 1, 2016, Petitioner's case was referred for investigation into a possible overpayment of food assistance. On August 4, 2017, the Department sent Petitioner a Notice of Overissuance (DHS-4358-A).

Petitioner's representative argued that they should not be responsible for an overissuance when the Department's failure to enact its own policy requirements. The Department is required to determine if an overissuance actually occurred from the date a case is referred to a recoupment specialist, and the recoupment specialist is required to send a DHS-4358-A to the client within 90 days of determining an overissuance occurred. In this case, the DHS-4358-A was mailed 276 days after Petitioner's case was referred to the recoupment specialist.


The relevant issue here is not whether the Department was compliant with BAM 700, or any other policy. It is not disputed that the Department failed to follow policy. The result the Department's failure to follow policy resulted in an overissuance of FAP benefits. Petitioner is not entitled to receive FAP benefits that she was not eligible for and the Department's failure to adhere to the promptness standards outlined in BAM 700 does not change the fact that she did receive benefits she was not eligible for. The Department credibly determined that Petitioner received an overissuance of FAP benefits and it is required to recoup the overissuance of FAP benefits Petitioner received.

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 received a \$ [REDACTED] overissuance of Food Assistance Program (FAP) benefits that must be recouped.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/nr



Kevin Scully
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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]