



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 7, 2017
MAHS Docket No.: 17-013165
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 November 6, 2017, from Detroit, Michigan. Petitioner was present with his wife, [REDACTED], and an interpreter, [REDACTED]. The Department of Health and Human Services (Department) was represented by Lacre Barnett, Recoupment Specialist. Nepali Interpreter, Mukti Rijal, was also present.

ISSUE

Did Petitioner receive an overissuance of Food Assistance Program (FAP) benefits that the Department is entitled 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. Petitioner was an ongoing FAP recipient.
2. Petitioner was a member of a FAP group that consisted of himself, his wife and three children.
3. On December 14, 2016, Petitioner's wife obtained employment.
4. On June 26, 2017, Petitioner submitted a completed redetermination indicating his wife had income from employment.

5. On September 15, 2017, the Department sent Petitioner a Notice of Overissuance stating Petitioner had been overissued FAP benefits in the amount of \$2,727 for the period of March 1, 2017, through July 31, 2017.
6. On September 26, 2017, Petitioner submitted 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 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, Petitioner's wife obtained new employment on December 14, 2016. The Department testified the new income was not reported to the Department until Petitioner completed a redetermination on June 26, 2017. As a result, the income was not initially budgeted and Petitioner received an overissuance in FAP benefits during the period of March 1, 2017, through July 31, 2017.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. 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. BAM 700, p. 6. An agency error is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 4. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705 (January 2016), p. 6. If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source when determining the correct benefit amount. BAM 705, p. 8. For client error overissuances due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 720 (January 2016), p. 10.

In support of its contention that Petitioner was overissued benefits, the Department presented FAP overissuance budgets for the period of March through July 2017 (Exhibit C). The Department calculated the benefits Petitioner should have received each month

during the overissuance period based on the addition of Petitioner's wife's unreported income. The Department received verification of Petitioner's wife's income from Pearson Foods and used it to calculate her actual income during the overissuance period (Exhibit D). The Department also presented Petitioner's FAP benefit summary (Exhibit B). The benefit summary shows Petitioner was issued FAP benefits in the amount of \$570 per month for the period of March 1, 2017, through April 30, 2017, and \$529 per month for the period of May 1, 2017, through July 31, 2017.

In the overissuance budgets presented for March and April 2017, the Department indicated Petitioner's group was entitled to \$0 benefits, as the group exceeded the gross income limit. The Department did not apply the earned income deduction to Petitioner's wife's unreported income. For the months of March and April 2017, the Department also listed reported income, which was a result of Petitioner's earned income from employment that had been reported. The Department did not apply the earned income deduction to Petitioner's reported income. Factoring the entirety of the employment income as unreported deprives Respondent from the receipt of a 20% earned income deduction for the portion of the earned income that was properly reported and previously budgeted. The Department should have only disallowed the 20% earned income deduction on the unreported earnings. BAM 720, p. 10. Therefore, the Department failed to establish that Petitioner was overissued benefits during the months of March and April 2017.

In the overissuance budgets for May and June 2017, the Department did not include any reported income, as Petitioner had lost his employment and it was no longer budgeted. The Department included the unreported income from Petitioner's wife's employment that it retrieved from the payroll history provided by her employer. The earned income deduction was properly not applied to Petitioner's wife's unreported income. For the month of May 2017, the Department calculated Petitioner's net income to be \$3,431. For the month of June 2017, the Department calculated Petitioner's net income to be \$3,093. The net income limit for a group size of five is \$2,370. Therefore, the Department correctly determined Petitioner was not entitled to FAP benefits in May and June 2017. Therefore, Petitioner was overissued \$1,058 in FAP benefits during those two months.

The Department testified Petitioner's wife's income was not originally budgeted for July 2017. However, the Department conceded that was a result of an agency error, as the income had been reported in the June 26, 2017 redetermination. In the budget presented for July 2017, the Department included the earned income deduction for Petitioner's wife's earned income from employment. The Department correctly determined Petitioner's correct FAP benefit amount was \$116. As Petitioner received \$529 in FAP benefits during July 2017, Petitioner was overissued \$413 in FAP benefits during July 2017.

Petitioner testified that he informed the Department of his wife's new income in January 2017. Petitioner stated he submitted copies of his wife's pay statements to the

Department during that time. However, there was no evidence provided that Petitioner did provide notice of the new income.

Based on the conclusions above, the Department failed to establish that it is entitled to recoup benefits for the months of March and April 2017. The Department did establish that it was entitled to recoup benefits for the months of May through July 2017 in the amount of \$1,471.

DECISION AND ORDER

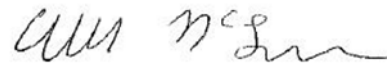
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it determined Petitioner was overissued benefits for the months of May through July 2017. The Department did not act in accordance with policy when it determined Petitioner was overissued benefits during the months of March and April 2017.

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

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. Reduce the overissuance amount to \$1,471.
2. Initiate recoupment and/or collection procedures for the amount of \$1,471, less any previously recouped/collected amounts, in accordance with Department policy; and
3. Supplement Petitioner for any FAP benefits in excess of \$1,471 or refund Petitioner for any sum provided toward the overissuance in excess of \$1,471.

EM/



Ellen McLemore

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

MDHHS-Kent-Hearings

Petitioner



BSC4
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