



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 24, 2018
MAHS Docket No.: 17-015936
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 January 22, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Michael O'Brien.

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 completed a redetermination in August 2017.
3. Petitioner was a member of a group of four individuals.
4. Petitioner received income from a land contract and Social Security benefits.
5. On October 4, 2017, the Department sent Petitioner a Notice of Overissuance informing her that she was overissued \$4,857 in FAP benefits for the period of November 1, 2016 through October 31, 2017 (overissuance period).

6. On October 26, 2017, Petitioner requested a hearing to dispute 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 submitted a hearing request disputing the Department's Notice of Overissuance that was issued on October 4, 2017, stating that she was overissued \$4,857 in FAP benefits for the period of November 1, 2016 through October 31, 2017. The Department stated the overissuance was a result of agency error.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. 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.

The Department presented the Notice of Overissuance that was sent on October 4, 2017. The notice provides a breakdown of the benefits that Petitioner received during the period of November 1, 2016 through October 31, 2017 (Exhibit A, p. 2). The Department testified that Petitioner was not entitled to any of the benefits that she received, as her household income exceeded the gross income limit.

A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (January 2017), p. 1. Gross income limitations are based on group size and are set forth in RFT 250. The Department testified that Petitioner reported she was receiving Social Security benefits due to the death of her late husband. That income was not originally budgeted, despite Petitioner's notification of the receipt of income. Additionally, Petitioner reported income from a land contract. The Department originally budgeted the income as rental income. The Department conceded it did not correctly budget the income from the land contract. The Department

stated that as a result of its own error, Petitioner was overissued benefits. The Department also testified when the income was budgeted correctly, it determined Petitioner was over the gross income limit. Therefore, Petitioner was not entitled to benefits during the overissuance period.

It is insufficient for the Department to merely state that Petitioner was not entitled to benefits because the household income exceeded the gross income limit. The Department must present evidence to support its assertion and the actions that it took. The Department did not present overissuance budgets showing the amount of benefits Petitioner should have received and the amount of benefits she did receive. The Department also did not present all of the original budgets during the overissuance period. It is impossible to determine what factors the Department considered when determining Petitioner exceeded the gross income limit, and therefore, was not entitled to benefits during the overissuance period. Additionally, the Department did not present the benefit summary inquiry to verify that Petitioner actually received \$4,857 in FAP benefits during the overissuance period. In the absence of such evidence, the Department failed to establish that it acted in accordance with policy when determining Petitioner was overissued FAP benefits.

DECISION AND ORDER

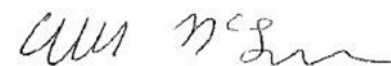
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner was overissued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

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. Petitioner did not receive an OI of FAP program benefits in the amount of \$4,857.
2. The Department is ORDERED to delete the OI and cease any recoupment and/or collection action.

EM/CG



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

Via Email:

MDHHS-Benzie-Hearings
M. Holden
D. Sweeney
BSC2-Hearing-Decisions
MAHS

Petitioner - Via First-Class Mail:

