



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 27, 2018
MAHS Docket No.: 17-016174
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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, telephone hearings were held on January 29, 2018, and February 26, 2018, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator, and [REDACTED], Overpayment Specialist.

ISSUE

Did the Department properly calculate an Overissuance (OI) of Food Assistance Program (FAP) benefits to Petitioner for the period from January 2015 through May 2015?

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 January 29, 2015, Petitioner submitted an application for State Emergency Relief benefits listing no income from employment and as having only income received from child support.
2. She was an approved FAP benefit recipient for the period from January 2015 through May 2015.
3. On December 6, 2017, the Department issued a Notice of Overissuance for the period from January 2015 through May 2015, indicating that the Petitioner had

received an OI in the amount of \$ [REDACTED] as a result of a client error in failing to report income from her employer [REDACTED] (Employer).

4. On December 20, 2017, the Petitioner submitted a hearing request disputing the Department's calculation of her FAP OI.

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.

First and foremost, during the course of the hearings in this case, Petitioner became aware of a potential intentional program violation case against her. This decision does not determine whether an intentional program violation was committed by Petitioner. That is not the issue before the undersigned. The issue to be decided by this decision is whether or not Petitioner received an OI of FAP benefits for the period from January 2015 through May 2015 and if the OI was properly calculated by the Department.

In this case, the Department alleges that the Petitioner failed to report earned income from Employer for the period from January 2015 through May 2015. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, (May 2014) p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 715 (July 2014), p. 6. Employment income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits. BEM 556 (July 2013), pp. 1-6. FAP recipients who are not simplified reporters are required to report starting or stopping employment or income as well as changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105 (January 2015), p. 10.

On Petitioner's application for benefits, she did not list employment but listed other income from child support. While the Petitioner provided proof of some communications to the Department regarding her employment, the communications were in April of 2013 and not at any point near the OI period in the case; therefore, those communications are not considered here. The Department provided for the hearing a Work Number

Report detailing Petitioner's wages for the relevant period. The report shows that Petitioner began employment with Employer on November 17, 2014, with a first paycheck on December 26, 2014, and continued employment through the pay period ending April 24, 2015. Petitioner's last paycheck was issued on May 1, 2015. In addition to the Work Number Report, the Department also provided OI Budgets for each month of the OI period.

While Petitioner testified that she did not report the changes in income immediately because of accounting and payroll issues with Employer, and that she had reported her income after the issues had been resolved, she provided no proof for the hearing of her actual income as she remembers it nor did she provide proof of the communications notifying the Department of changes in her income.

When calculating an OI budget, if improper reporting or budgeting of income caused the OI, the actual income amount should be used for the calculation of the OI for that income source. BAM 715, p. 8. In reviewing the OI budgets for each month, the Department properly included Petitioner's unreported earned income for each month.

After discovery of the unreported income and during the process of calculating the OI budgets, the Department also determined that Petitioner should not have been awarded a deduction for her housing expense because it was unverified. During the hearing, the hearing facilitator was able to find documents submitted by Petitioner in 2012 regarding her rent expense. In addition, the Petitioner submitted as an exhibit an email between herself and her case worker wherein her case worker confirms receipt of the proof of rental expense in May 2013. Furthermore, Petitioner testified that her rent has not changed since 2013; therefore, it was her understanding that because there was no change in her rent, she was not required to submit any additional proofs to the Department. Petitioner is correct in her understanding of Department policy. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental, or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554 (October 2014), pp. 12-13. The Department is required to verify shelter expenses at application and when a change is reported. BEM 554, p. 13. The shelter verification policy does not require verification of housing expenses at redetermination unless there is a change. Therefore, the removal of Petitioner's housing expense from the OI budget was in error.

In preparation for the hearing, Petitioner reviewed the budgets and believes that the Department did not properly consider her child support income from each month. However, the Department did not change anything related to Petitioner's child support income in the budgets and used the same numbers which were used to previously calculate her FAP benefit rate. Since the budgets used for the hearing do not reflect any changes to the child support income based on what was previously used, any discrepancies should have been addressed around the time of benefit issuance between January 2014 and May 2014. Clients are required to report changes in circumstances that potentially affect eligibility or benefit amount and should be reported

within 10 days of the change. BAM 105, p. 10. Clients also have the right to request a hearing for any action, failure to act, or undelay by the Department. BAM 105, p. 6. The client must file hearing requests within 90 days from the date of the written Notice of Case Action to request a hearing. BAM 600 (January 2015), p. 6. In FAP cases, the client may request a hearing disputing the current level of benefits at any time within the benefit period. *Id.* (emphasis added). Therefore, the value of the child support income as used by the Department in calculating Petitioner's FAP benefit rate at the time of issuance and now at the time of calculating the OI remains unchanged for purposes of this decision. Any income properly budgeted in the issuance budget remains the same in the corrected OI budget. BAM 715, p. 7. The Department's calculation of child support income as it appears in the OI budgets was in accordance with Department policy.

Finally, Petitioner disputed the Department's calculation of her housing-related expenses and believes that expenses were removed from the OI budget that should not have been removed. Again the Department testified that no changes were made to the housing expenses. Petitioner provided as exhibits several partial Notice of Case Actions. Only one of the Notice of Case Actions provided included the second page listing the income and deductions considered. This Notice of Case Action lists Petitioner's housing cost of \$ [REDACTED] and a Heat and Utility Standard (including phone) of \$ [REDACTED]. No other deductions were provided. The Heat and Utility Standard covers all heat and utility costs including cooling except things such as installation. BEM 554 (July 2013), p. 15. FAP groups that qualify for the Heat and Utility Standard **do not** receive any other individual utility standards. BEM 554, p. 14-15. Verification of the other utility standards is not required if the household is eligible for the Heat and Utility Standard. *Id.* Therefore, since no changes were made and because Petitioner received the Heat and Utility Standard for each month of the OI period, she is not eligible for any other shelter deductions.

To determine the first month of the overissuance period the Department allows time for: (i) the client reporting period, per BAM 105; (ii) the full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715, p. 5. In consideration of the start of Petitioner's employment during the pay period ending December 19, 2014, and first pay check as of December 26, 2014, the Department should have begun the OI in February 2015 after application of the 10-10-12 rule discussed above. Therefore, the value of the alleged OI for January 2015 is removed from the total OI from the OI period.

After review of each of the budgets, Petitioner was under the gross income limit for each month of the OI period. RFT 250 (October 2014), p. 1. However, in each of these months, the Department improperly removed the housing expense from each of the OI budgets as discussed above; therefore, the OI amounts for each month are inaccurate.

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 policy when it calculated Petitioner OI for the period from January 2015 through May 2015.

DECISION AND ORDER

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. Delete and cease any recoupment or collections efforts for FAP benefits for the period from January 2015 through May 2015.
2. If the Department recouped or collected any of the alleged FAP OI, issue supplements or refunds to Petitioner in the amount recouped and/or collected in accordance with Department policy.



AM/

Amanda M. T. Marler
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]

DHHS Department Rep.

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
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