



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: March 19, 2018
MAHS Docket No.: 18-001494
Agency No.: ██████████
Petitioner: ██████████

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, a telephone hearing was held on March 19, 2018, from Detroit, Michigan. The Petitioner was self-represented and appeared with her mother, ██████████, as a witness. The Department of Health and Human Services (Department) was represented by ██████████ ██████████ Hearings Facilitator, and ██████████, Overpayment Specialist.

ISSUE

Did the Department properly determine an Agency error Overissuance (OI) for the period from May 2017 through November 2017?

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 March 6, 2017, Petitioner submitted an Application for FAP benefits listing herself and her mother as household members.
2. Both Petitioner and her mother attend school.
3. Petitioner works more than 20 hours per week, but the Department has no record of her mother working more than 20 hours per week after March 3, 2017.
4. On September 25, 2017, the Office of Quality Assurance & Internal Control notified the Petitioner's case worker and an overissuance specialist that Petitioner was completely ineligible for benefits due to student status in May of 2017.

5. On November 6, 2017, the Department issued a Notice of Overissuance due to Agency error in the amount of \$ [REDACTED] for the period from May 1, 2017, through November 30, 2017.
6. On January 26, 2018, the Department received Petitioner's request for hearing disputing the 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.

In this case, the Department believes that it erred in issuing FAP benefits to Petitioner. The error was in the Department's failure to consider Petitioner's mother's student status. The Department contends that because Petitioner is under age [REDACTED] lives with her mother, and because her mother is a full-time student who does not work more than 20 hours per week, Petitioner is ineligible for FAP benefits.

A person is considered to be in student status if they are age 18-49 and enrolled half-time or more in a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245 (April 2017), p. 4. The parties agree that both Petitioner and her mother were students during the relevant period. If a person is in student status, they must meet certain criteria to be eligible for assistance. BEM 245, p. 2. To be eligible, they must meet one of the following criteria:

- Receiving Family Independence Program (FIP) benefits.
- Enrolled in an institution of higher education as a result of participating in a Job Training Partnership Act (JTPA) program, program under Section 236 of the Trade Readjustment Act of 1974, another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.

- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program.
- Participating in a State or federally-funded work study program during the regular school year.
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through 11 and the local office has determined adequate child care is not available to enable the person to attend class and work at least 20 hours per week or participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who care for a dependent under age 12.

BEM 245, pp. 4-5. Neither party raised any of the eligibility criteria as an issue other than employment for at least 20 hours per week. The Department contends that Petitioner was working at least 20 hours per week, but that her mother was not; therefore, Petitioner should be ineligible for benefits.

At the time of Petitioner's application for benefits, she was ■ years old. She did not turn ■ until ■. Policy provides that parents and their children under 22 years of age who live together must be in the same group regardless of whether the child has their own spouse or child who lives with the group. BEM 212 (January 2017), p. 1. Petitioner's application lists her and her mother as living together as well as purchasing and preparing food together. In general, persons who live together and purchase and prepare food together are members of the FAP group. BEM 212, p. 6.

Despite the above policies, the Department did not include Petitioner's mother in the FAP group and allotted benefits based upon a group size of one from the date of her application through November 2017. This can be explained by policy which states that a person who is in student status and does not meet the eligibility criteria in BEM 245 is a non-group member. BEM 212, p. 9. Effectively, Petitioner's mother was in the group and then became an ineligible group member because of her student status.

It is also important to note that most disqualifications or ineligibility rules apply to individuals, not to groups. Once a FAP group is determined, then a categorical eligibility is determined. BEM 212, p. 10. Categorical eligibility is based upon asset and income limits. BEM 213 (January 2016), p. 1. Therefore, to apply Petitioner's mother's student status disqualification to Petitioner is inappropriate because student status disqualifications apply to individuals and not groups. If the situation were to be reversed and Petitioner's mother had applied for benefits, but Petitioner had not met the school eligibility requirements, the ineligibility would not be extended to Petitioner's mother.

The ineligibility would be limited to Petitioner. In the hypothetical, Petitioner's mother would receive benefits based upon a group size of one.

After reviewing all of the evidence, it appears that Petitioner's case work originally determined Petitioner's and her group's eligibility correctly. The error arose not in processing the application and issuing benefits to the Petitioner, but in applying policy during the quality review and when determining the OI.

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 determined an Agency error OI for the period from May 2017 through November 2017 totaling \$ [REDACTED]

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 the recoupment or collections of the alleged OI totaling \$ [REDACTED] for the period from May 2017 through November 2017;
2. If funds have already been recouped or collected for the relevant period, issue refunds or supplements to Petitioner in the amount previously recouped or collected in accordance with Department policy; and
3. Notify Petitioner in writing of the value of any refunds or supplements.



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

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