



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 23, 2018
MAHS Docket No.: 18-001766
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 three way telephone hearing was held on March 22, 2018 from Detroit, Michigan. The Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Coordinator and [REDACTED], Recoupment Specialist.

ISSUE

Did Petitioner receive an overissuance (OI) 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 previously a recipient of FAP benefits.
2. During a FAP redetermination interview on February 1, 2017 Petitioner reported that she was self-employed and earning income.
3. The Department failed to act on the information it received and failed to include Petitioner's earnings in the calculation of her FAP benefit eligibility.
4. On March 7, 2017 the Department sent Petitioner a Notice of Case Action advising her that effective March 1, 2017 ongoing she had been approved for FAP benefits

in the amount of █████ monthly for her group size of four. Petitioner's FAP benefit amount was based on █████ in self-employment income. (Exhibit A, pp. 45-46)

5. In December 2017 the Department became aware that it had failed to include Petitioner's earnings in the calculation of her FAP benefit eligibility.
6. On January 5, 2018 the Department sent Petitioner a Notice of Overissuance informing her that she received an agency error caused OI of FAP benefits in the amount of █████ for the period of April 1, 2017 to November 30, 2017 due to the Department's failure to take action on her reported self-employment earnings. (Exhibit A, pp. 3-5)
7. On January 10, 2018 Petitioner requested a 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, on January 5, 2018 the Department sent Petitioner a Notice of Overissuance informing her that from April 1, 2017 to November 30, 2017 it determined that she received an agency error caused OI of FAP benefits in the amount of █████ as a result of the Department's failure to timely act on her reported self-employment earnings.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (October 2016), p. 1. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or inaccurate information to the Department. BAM 700, pp. 4-6. An agency error OI is caused by incorrect actions by the Department, including delayed or no action, which result in the client receiving more benefits than they were entitled to receive. BAM 700, pp. 4-6. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 715 (January 2016), p. 6; BAM 705 (January 2016), p. 6.

The Department presented a benefit summary inquiry to establish that during the period of April 2017 to November 2017 it issued ██████ in FAP benefits to Petitioner. (Exhibit A, p. 7). The Department alleged that after correctly budgeting Petitioner's self-employment income, Petitioner's group was eligible to receive █ in FAP benefits during this period, which resulted in an OI of FAP benefits in the amount of ██████. It should be noted that the Department did not include the month of June 2017 in the OI calculation, as Petitioner did not receive an OI for that month. (Exhibit A, p. 8).

In support of its OI case, the Department presented self-employment income and expense statements for each month in the OI period that were completed by Petitioner. (Exhibit A, pp. 25-43). The Department also presented FAP OI budgets for each month in the OI period showing how Petitioner's self-employment income was calculated and how the total OI amount was determined. (Exhibit A, pp. 8-24)

The amount of self-employment before any deductions is called total proceeds. Countable income from self-employment equals (i) the total proceeds of self-employment **minus** (ii) allowable expenses of producing the income, which is the higher of 25 percent of total proceeds or actual expenses if the client chooses to claim and verify the expenses. BEM 502 (January 2017), p. 3. The Department testified that in calculating Petitioner's monthly self-employment income, it relied on the information from the self-employment income and expense statements, specifically, taking the total reported income and subtracting 25% for allowable expenses, as Petitioner did not submit actual receipts for the handwritten expenses on the forms that she completed. At the hearing, Petitioner asserted that her actual allowable expenses were greater than 25% of her total proceeds and stated that she was never asked to provide actual receipts as verification. However, the self-employment income and expense statement forms completed by Petitioner clearly indicate that she is to attach business receipts as proof of income and expenses. Thus, the Department properly considered total income, less the standard 25% for expenses.

A review of the FAP OI budgets shows that the Department concluded Petitioner's self-employment was in excess of the gross income limit for her group size, which resulted in her group being ineligible for any FAP benefits during the OI period. FAP groups with no senior/disabled/veteran (SDV) member, must have gross monthly income below the applicable gross and net income limits. There was no evidence presented that Petitioner's FAP group included any SDV members, thus, the group is subject to the gross income test for FAP eligibility. BEM 550 (January 2017), pp. 1-2.; RFT 250 (October 2016), p. 1.

Upon further review, when Respondent's self-employment earnings are included in the calculation of the group's FAP eligibility, Petitioner's group was eligible to receive █ in FAP benefits during the OI period, as Petitioner's household's gross income for each month was in excess of the applicable gross income limit for her four person group size. See RFT 250. Because Petitioner's group had excess gross income, the Department was not required to consider any additional expenses such as housing costs and insurance premiums, as deductions to income on the budgets. Thus, the Department is

entitled to recoup or collect from Respondent ██████ in FAP benefits which is the difference between the ██████ in FAP benefits actually issued and the ██████ in FAP benefits she was eligible to receive.

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 establish a FAP benefit OI to Petitioner in the amount of ██████.

DECISION AND ORDER

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

The Department is ORDERED to initiate recoupment and/or collection procedures for a ██████ agency error FAP OI in accordance with Department policy, less any amount that has already been recouped/collected.



ZB/tlf

Zainab A. Baydoun
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:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]