



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Julie A. McMurtry
Interim Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 1, 2017
MAHS Docket No.: 17-008438
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

HEARING DECISION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on July 27, 2017, from Detroit, Michigan. The Department was represented by [REDACTED], Recoupment Specialist. The Petitioner was represented by Petitioner. [REDACTED], Petitioner's husband, also testified at the hearing.

ISSUE

Did Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits for the period of November 1, 2016, through April 30, 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. Petitioner was a recipient of FAP benefits from the Department.
2. The Department alleges Petitioner received a FAP OI during the period November 1, 2016, through April 30, 2017, due to Petitioner's error.
3. The Department alleges that Petitioner received [REDACTED] 0 OI that is still due and owing to the Department.
4. On June 26, 2017, Petitioner filed 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), and Department of Health and Human Services Reference Tables Manual (RFT).

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 to .3015.

Additionally, the amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 715 (January 2011), p. 5; BAM 705 (July 2011) p 5. In this case, the Department alleged that the Petitioner received an overissuance from November 1, 2016, through April 30, 2017, in the amount of [REDACTED]. The Department testified that it was aware that Petitioner's husband had been receiving disability benefits.

Petitioner's husband confirmed that he began disability payments in approximately May 2016. Further, Petitioner's husband confirmed that he returned to work on August 24, 2016. Petitioner testified that she attempted to report her husband's return to work shortly after his return. Petitioner's husband testified that when he initially returned to work, he was working sporadically, and further, testified that the assigned case worker instructed the family to report the earned income when it reached \$200.00 more than the disability payments. Petitioner's husband indicated that Petitioner called her assigned worker when he earned more than \$200.00, more than his disability payments. Petitioner testified that she made approximately three telephone calls following her husband's return to work. Petitioner stated that she left messages but did not receive a return call from her assigned worker.

The budgets presented by the Department included the earned income that was not properly reported. However, the budget presented by the Department did not include 20% earned income deduction. Under Department policy gross countable earned income is reduced by a 20% earned income deduction. BEM 550 (October 2015), p. 1. However, the 20% earned income deduction is not allowed when determining overissuances due to failure to report earned income BAM 715 (January 2016), p. 8. Because the Department determined that Petitioner failed to report her income, it did not include the 20% earned income deduction.

The Department failed to include the Case Comments, which would have been recorded at the time Petitioner's husband returned to work. It is possible that Petitioner reported the income as stated and the reporting may have been recorded in the Case Comments. Additionally, Petitioner's assigned worker at the time did not appear at the

hearing to dispute her testimony. Accordingly, Petitioner's testimony that she timely reported her husband's return to work is accepted as credible. Therefore, the 20% earned income deduction should have been allowed in the months in which the group was not over the gross income limit.

The budgets indicate that the Petitioner's group was a group size of seven. The budgets provided by the Department list a gross income limit of \$0.00. A review of Department policy relating to the period in question reveals that the limit for a group size of seven was [REDACTED]. RFT (October 2016), p. 1. Petitioner's group was over the gross income limit in December 2016, February 2017, and March 2017. The Department agreed that the group was not over the gross income limit for November 2016 and January 2017. The budget provided by the Department indicated that the group's total income for April 2017 was [REDACTED]. The Department testified that the group was over the gross income limit for April 2017; however, the Department listed the gross income limit as \$0.00. As such, it is unknown what basis the Department used in determining that the group was over the gross income limit for April 2017.

As previously stated, because Petitioner's testimony that she made several attempts to report her husband's return to work is accepted as true, it is found that the OI was the result of Agency error and not Petitioner's error. Further, because the Department failed to allow the 20% earned income deduction, it is found that the Department failed to establish an OI for November 2016, January 2017 and April 2017. However, because the group was over the gross income limit for December 2016, February 2017 and March 2017, it is found that the Department has established an OI for these months. The budgets revealed that the group received [REDACTED]0 during December 2016, February 2017, and March 2017 but was not entitled to any benefits during these months. Therefore, the Department has established an OI in the amount of [REDACTED] for the months of December 2016, February 2017 and March 2017.

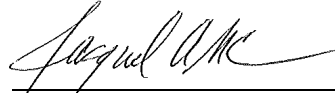
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish a FAP benefit OI to Petitioner totaling [REDACTED]

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED IN PART** with respect to the determination that Petitioner was overissued benefits in which the Department is entitled to recoup and **REVERSED IN PART** with respect to the amount of the overissuance.

The Department is ORDERED to reduce the OI from [REDACTED] to [REDACTED] for the period November 1, 2016, through April 30, 2017, and initiate recoupment/collection procedures in accordance with Department policy.

JM/jaf



Jacquelyn A. McClinton
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]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
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