



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 22, 2018
MAHS Docket No.: 18-005168
Agency No.: [REDACTED]
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION

Following Respondent'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 June 21, 2018, from Lansing, Michigan. Respondent and her husband, [REDACTED], personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Recoupment Specialist Vicki Dekruger. Ms. Dekruger testified on behalf of the Department. The Department submitted 122 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Did the Department properly determine that Respondent had received an overissuance of Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. On September 20, 2017, Respondent applied for FAP benefits. [Dept. Exh. 6-41].
2. On September 25, 2017, the Department mailed Respondent a Notice of Case Action notifying Respondent she was approved for \$237.00 from September 20, 2017, through September 30, 2017, and \$643.00 a month from October 1, 2017, through August 31, 2018. The Notice indicated the eligibility was determined based on unearned income of \$1,694.00. [Dept. Exh. 42-46].

3. On April 25, 2018, the Department received a Wage Match Client Notice, indicating Respondent's husband, [REDACTED] was employed with a quarterly income of \$16,808.00. [Dept. Exh. 49-50].
4. On April 25, 2018, the Department mailed Respondent a Notice of Case Action informing Respondent that her FAP was closing due to Mr. Fretwell's earned income not being budgeted. The Notice also indicated that once [REDACTED] earned income was added to the budget, Respondent was no longer eligible for FAP benefits. The Notice showed that the eligibility determination was based on earned income and unearned income. [Dept. Exh. 51-57].
5. On April 30, 2018, the Department received Respondent's husband's pay stubs from October 5, 2017, through April 19, 2018. [Dept. Exh. 59-94].
6. On May 27, 2018, an Overissuance Referral was completed. The Referral concluded that during the client interview for FAP benefits, Respondent reported her husband's income, however the Department failed to enter it into the budget. Therefore, this was an Agency Error that was discovered through a Wage Match. [Dept. Exh. 95].
7. Respondent was a recipient of FAP benefits from the Department at all times pertinent to this hearing.
8. The Department alleges Respondent received a FAP overissuance during the period of September 20, 2017, through April 30, 2018, due to the Department's error of failing to budget Respondent's husband's earned income. [Dept. Exh. 100].
9. The Department alleges that Respondent received a \$7,122.00 overissuance that is still due and owing to the Department. [Dept. Exh. 101].

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 to .3015.

Departmental policy, BAM 700, Benefit Overissuances, states that when a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2018). An agency error is caused by incorrect action (including delayed or no action) by the Department staff or Department processes. BAM 700, p 4. Agency errors will be assigned to the client depending on the type of agency error that occurred. *Id.* at 6.

In this case, Respondent properly reported her husband's income on her FAP application. The Department representative testified that the Department failed to budget Respondent's husband's reported income.

Respondent testified that she should not be held responsible for the agency's error of failing to budget her husband's reported income. She stated that she does not know the amount of benefits she is entitled too and must rely on the Department. Therefore, she was in no position to question the amount of FAP benefits she received, especially when she had done all that was required of her to do by reporting her husband's income. Further, Petitioner also objects to the amount of time it took for the Department to discover their own error. If the Department had not taken seven months to find the error, in spite of her numerous interactions with them when her FAP group changed due to foster children exiting and entering the home, the amount would have been much lower.

While this Administrative Law Judge acknowledges Respondent's genuine concern for a bill of \$7,122.00 that she was not expecting, or aware she would be receiving, this Administrative Law Judge is bound by the laws and regulations governing the issuance of FAP benefits, on which the Department's policies are based. An extensive review of Respondent's disputed budgets by this Administrative Law Judge before rendering this Hearing Decision shows that all calculations were properly made at review, and all FAP issuance/budgeting rules were properly applied.

Respondent's grievance centers on dissatisfaction with the Department's current policy. Respondent's request that she not be penalized for the Department's error is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940). As such, the Department's recoupment of the FAP overissuance must be upheld.

In accord with Department policy, the Department must attempt to recoup the overissuance regardless of fault. BAM 700, p 6. Because the Department failed to properly budget Respondent's husband's earned income, Respondent received an overissuance of \$7,122.00 during the period of September 20, 2017, through April 30, 2018.

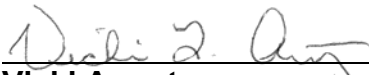
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish a FAP benefit overissuance to Respondent totaling \$7,122.00.

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

The Department is **ORDERED** to initiate collection procedures for a \$7,122.00 overissuance in accordance with Department policy.

VLA/hb



Vicki Armstrong
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) 763-0155; 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

Denise Croff
301 E. Louis Glick Hwy.
Jackson, MI 49201

DHHS Department Rep.

MDHHS-Recoupment
235 S Grand Ave
Suite 1011
Lansing, MI 48909

Jackson County, DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]