



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.: 18-001372
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 14, 2018, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Teresa Blasius, Recoupment Specialist, and Kimber Nolan, Hearing Facilitator, who did not participate in the hearing.

ISSUE

Did the Department properly find that Petitioner received an over-issuance of Food Assistance Program (FAP) benefits totaling \$19,422 for the period April 1, 2012 to February 28, 2017 due to client error?

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 [REDACTED] 2012, Petitioner applied for FAP benefits, identifying her two sons, both under age 22, as household members (Exhibit A, pp. 1-21). In her application, Petitioner indicated that she was separated from her husband, did not see getting back together, and planned on filing for divorce (Exhibit A, p. 21).
2. On April 11, 2012, the Department sent Petitioner a Notice of Case Action notifying her that she was approved for FAP benefits beginning April 11, 2012, for a three-person FAP group consisting of her and her two sons (Exhibit A, pp. 22-29).

3. One of Petitioner's sons was excluded from her FAP group due to his fugitive felon status. The FAP group size returned to three effective April 1, 2014 (Exhibit A, pp. 37-38, 46, 49).
4. In December 2014, one son left the home and the group size was reduced to two (Exhibit A, pp. 30-37).
5. Effective April 2015, Petitioner's remaining son left the home, and Petitioner's FAP group was reduced to one (Exhibit A, pp. 73-78).
6. Petitioner's FAP case closed effective February 28, 2017 (Exhibit A, pp. 91-94).
7. At all relevant times, Petitioner reported her address at [REDACTED] Street.
8. Petitioner never reported her husband as being in the household.
9. During the alleged over-issuance period, Petitioner's husband completed a loan application indicating that he lived at the same address on [REDACTED] as Petitioner (Exhibit A, pp. 95-98).
10. Petitioner was listed with her husband as either a joint owner or beneficiary of three bank accounts. The statements were addressed to Petitioner's husband at Petitioner's [REDACTED] address. (Exhibit A, pp. 99-124.)
11. In his February 2, 2014 driver's license application, Petitioner's husband reported his address as Petitioner's [REDACTED] address. (Exhibit A, pp. 125-126).
12. Petitioner's husband reported the [REDACTED] address as his address to [REDACTED] and to the Social Security Administration (Exhibit A, pp. 127-131).
13. On January 23, 2018, the Department sent Petitioner a Notice of Overissuance notifying her that, due to her failure to report her husband in the household from April 1, 2012 to February 28, 2017, she had received \$20,695 in FAP benefits she was ineligible to receive. Because \$1,273 had been recouped from Petitioner from a previously established over-issuance due to her sons' unreported income from September 1, 2014 to December 31, 2014, the FAP over-issuance was reduced to \$19,422 after the adjustment. (Exhibit A, pp. 280-287).
14. On [REDACTED] 2018, the Department received Petitioner's request for hearing disputing the over-issuance.

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.

The Department alleges that Petitioner failed to report that her husband was in her household from April 11, 2012 to February 28, 2017 and that when her husband is added as a household member and his income is included in the household's income, Petitioner was not eligible for any of the FAP benefits issued to her during this period. Spouses who are legally married and live together must be in the same group. BEM 212 (April 2012 and January 2017), p. 1. Living with means sharing a home where family members usually sleep and share any common living quarters. BEM 212, pp. 2-3. A person who is temporarily absent from the group is considered living with the group. For FAP purposes, a person is considered living with the group even when temporarily absent from the group if all of the following are true: (i) the person's location is known; (ii) the person lived with the group before an absence; (iii) there is a definite plan for return, and (iv) the absence has lasted or is expected to last 30 days or less. BEM 212, pp. 2-3.

In support of its position that Petitioner's husband lived with Petitioner in the [REDACTED] address, the Department presented (i) loan applications Petitioner's husband submitted in August 2014 and May 2015 in which he identified the [REDACTED] address as his present address and stated he had resided at the address 5 years; (ii) monthly account statements from April 2012 to March 2017 showing that Petitioner was listed as a joint owner or beneficiary of three accounts with her husband, all delivered to the [REDACTED] address; (iii) Petitioner's husband's driver's license application from February 2014 showing that he identified his address as the [REDACTED] address; (iv) an April 25, 2017 letter from [REDACTED] Petitioner's husband's pension plan issuer, showing the [REDACTED] address as Petitioner's husband's current address on file; and (v) a January 18, 2018 email from the Social Security Administration indicating that the [REDACTED] address was Petitioner's husband address of record.

At the hearing, Petitioner acknowledged that she and her husband were married although she contended that it was "not a real marriage" and she was not aware of his income or his assets. She stated that he lived on a camper on his brother's property in town but admitted that he would come and stay at the [REDACTED] residence, which he owned, periodically for one to two weeks at a time. Petitioner also agreed that he had his mail delivered to the [REDACTED] address and would come to the home to pick it up.

The evidence presented was sufficient to establish that Petitioner's husband lived in the home on [REDACTED] as defined in BEM 212. Although he was occasionally away from the home at the camper, he treated the home as his residence. Although Petitioner testified that she was not aware of the loan applications, bank accounts, or income, she admitted that he used the [REDACTED] address for his mail and that he would stay at the home for one to two weeks at a time. Petitioner did not identify any prolonged period that her husband was outside the home to establish that his absences were more than just temporary. Because Petitioner was married to her husband and they lived together as defined in BEM 212, Petitioner's husband was a mandatory member of her FAP group.

The Department alleges that, when Petitioner's husband is added to Petitioner's FAP group and his income is considered in determining the group's FAP eligibility, the group had excess net income during all the months from the date of application, [REDACTED] 2012, to the date of closure, February 28, 2017. When a client group receives more benefits than entitled to, the Department must attempt to recoup the over-issuance. BAM 700 (January 2018), p. 1. An over-issuance is due to client error when the client gives incorrect or incomplete information to the Department. BAM 700, p. 7; BAM 715 (October 2017), p. 1.

In this case, Petitioner alleged that she did not realize that she was required to report her husband as a household member because of their unusual marriage circumstances. She also testified that she was not aware of his income or assets. Although the evidence at the hearing established that Petitioner did not intentionally intend to defraud the state by excluding her husband from the household, the over-issuance resulting from this exclusion was due to Petitioner giving incomplete information to the Department. Therefore, the error was properly considered client error.

The Department presented evidence that, from April 11, 2012 to February 28, 2017, \$20,695 in FAP benefits were issued to Petitioner. This amount properly includes recouped amounts for issuances in October 1, 2016 to February 1, 2017. BAM 715, p. 7. Because \$1,273 had been recovered from Petitioner from a previously established FAP over-issuance for the period September 1, 2014 to December 31, 2014 due to unreported income, the Department alleged that the FAP over-issuance was \$19,422, the difference between the \$20,695 issued to Petitioner and the \$1,273 already collected.

In support of its position that Petitioner was ineligible for any of the FAP benefits issued to her between April 11, 2012 and February 28, 2017, the Department presented FAP over-issuance budgets for each month during this period, showing the calculation of Petitioner's FAP eligibility when her husband and his income was considered in the calculation of the group's FAP net income. With limited exceptions, the income of all group members is considered in calculating FAP eligibility and benefit amounts. BEM 550 (February 2012 and January 2017), pp. 1-4; BEM 556 (October 2011 and July

2013), p. 2. The Department presented evidence showing Petitioner's husband received monthly social security and pension benefits during the period at issue. A review of the budgets shows that the Department properly considered Petitioner's husband's actual income each month in calculating the FAP over-issuance.

At the hearing, Petitioner presented a letter from the Department addressed to her son [REDACTED] dated January 5, 2017 notifying him that he was eligible for lump sum payment of \$3,120 in FAP benefits deposited onto his FAP electronic benefit transfer (EBT) card as a result of settlement of the *Barry v Lyon* lawsuit unless he opted out. (Exhibit 1.) The Department's evidence indicates that [REDACTED] had been a member of Petitioner's FAP group but was removed for the period April 1, 2013 to March 31, 2014 due to his fugitive felony status (Exhibit A, p. 46). A portion of this supplement (\$1,178) was used to offset the outstanding indebtedness for the unreported income for September 1, 2014 to December 31, 2014, leaving a remaining \$1,942 supplement (Exhibit A, pp. 150, 153). At the hearing, the Department asserted that, because a supplement was issued due to the improper disqualification of [REDACTED] from the FAP group, [REDACTED] was added back to the group in the FAP over-issuance budgets for April 1, 2013 to March 31, 2014 and the supplement was budgeted into the determination of the over-issuance for those months. However, it is unclear from reviewing either the benefit summary inquiry or the budgets how the supplement was budgeted over the course of the year to show what amount of FAP benefits Petitioner had received at the time of issuance and how that amount was increased to take into consideration the supplement. In the absence of such evidence, the Department has failed to establish the \$6,017 alleged FAP over-issuance for April 1, 2013 to March 31, 2014.

For the remaining benefit months, the Department established that, when Petitioner's husband's income was considered in the calculation of the group's FAP net income, the group was not eligible for any of the benefits issued from April 11, 2012 to March 31, 2013 and from April 1, 2014 to February 28, 2017. The sum of those over-issued benefits total \$13,405. Thus, the Department is entitled to recoup and/or collect \$13,405 in over-issued FAP benefits from Petitioner.

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 acted in accordance with Department policy when it found that Petitioner had been overissued FAP benefits due to client error but that the Department's evidence established an over-issuance totaling only \$13,405.

DECISION AND ORDER

Accordingly, the Department's decision finding that Petitioner received a \$19,422 FAP over-issuance 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. Reduce the FAP OI for \$13,405 for the period April 1, 2012 to February 28, 2017 and begin collection and/or recoupment proceedings in accordance with Department policies.



AE/tm

Alice C. Elkin
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

Stephanie Mietz
675 E. Cedar Ave Ste. 2
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Petitioner

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cc: FAP: M. Holden; D. Sweeney
Gladwin County AP Specialist