



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: August 3, 2018  
MAHS Docket No.: 18-005990  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Kevin Scully**

**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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on July 25, 2018, from Lansing, Michigan. Petitioner represented herself. [REDACTED] Petitioner's husband, also testified on her behalf. The Department of Health and Human Services was represented by Alma Ramos, Recoupment Specialist.

**ISSUE**

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits that must be recouped?

**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], 2014, the Department received Petitioner's application for Food Assistance Program (FAP) as a group of four. Exhibit A, pp 71-96.
2. On August 29, 2014, the Department notified Petitioner that she was approved for Food Assistance Program (FAP) benefits with a \$632 monthly allotment of benefits (with benefits prorated for August of 2014 based on her [REDACTED], 2014, application date) based on a monthly household income of \$0. Exhibit A, pp 65-70.

3. On September 8, 2014, Petitioner reported to the Department that her husband had started employment on September 8, 2014, and expected to work 36 hours per week at a rate of \$14.53 per hour. Exhibit A, pp 62-64.
4. On October 21, 2014, Petitioner reported to the Department that she had started employment on October 15, 2014, and expected to work 40 hours per week at a rate of \$11.25 per hour. Exhibit A, pp 59-61.
5. Petitioner's husband started employment on September 8, 2014, and received earned income from September 20, 2014, through February 2, 2016. Exhibit A, pp 33-45.
6. Petitioner was employed and received earned income from October 24, 2014, through November 6, 2015. Exhibit A, pp 48-58.
7. On or around May 7, 2015, the Department became aware that Petitioner was not eligible for Food Assistance Program (FAP) benefits based on household income. Exhibit 1, pp A1-10.
8. On June 17, 2015, Petitioner notified the Department that she was ineligible for Food Assistance Program (FAP) benefits due to household income and requested assistance with the processing of her benefits case. Exhibit 1, pp A1-10.
9. On or around June 25, 2016, Petitioner's caseworker was aware that Petitioner was ineligible for Food Assistance Program (FAP) benefits and notified Petitioner that there was a delay in the closing of her Food Assistance Program (FAP) benefits. Exhibit 1, pp A1-10.
10. The gross monthly income limit for a group of four to receive Food Assistance Program (FAP) benefits was \$2,584 as of October 1, 2014. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2014), p 1.
11. Petitioner received Food Assistance Program (FAP) benefits totaling \$5,841 from November 1, 2014, through July 31, 2015. Exhibit A, pp 10-11.
12. Petitioner was eligible for a \$399 allotment of Food Assistance Program (FAP) benefits for November of 2014, but she was not eligible for any Food Assistance Program (FAP) benefits from December 1, 2014, through July 31, 2015. Exhibit A, pp 12-28.
13. On June 7, 2018, Petitioner's benefits case was referred for investigation into a possible overissuance of Food Assistance Program (FAP) benefits from October 1, 2014, through December 31, 2014. Exhibit A, p 97.

14. On June 12, 2018, the Department sent Petitioner a Notice of Overissuance (DHS-4358-A) instructing her that a \$5,442 overissuance of Food Assistance Program (FAP) benefits would be recouped. Exhibit A, p 3.
15. On June 13, 2018, the Department received Petitioner's request for a hearing protesting the recoupment of a Food Assistance Program (FAP) benefits overissuance. Exhibit A, p 2.

### **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.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (January 1, 2018), pp 3-4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (January 1, 2018), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2018), p 1.

When a potential overissuance is discovered the following actions must be taken:

1. Immediately correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
2. Obtain initial evidence that an overissuance potentially exists.
3. Determine if it was caused by department, provider or client actions.
4. Refer any overissuances needing referral to the RS within 60 days of suspecting one exists.

Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2018), p 10.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (January 1, 2018), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (January 1, 2018), p 7. A pended negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

Petitioner applied for FAP benefits on [REDACTED], 2014, as a group of four, and she was approved for the maximum amount of FAP benefits available based on no income being received in her household.

On September 8, 2014, Petitioner reported to the Department in a timely manner that her husband had started employment. On October 21, 2014, Petitioner reported to the Department in a timely manner that she had started new employment.

Department policy requires that FAP recipients report changes to their circumstances affecting their eligibility for benefits within 10 days. The Department was required to act on client reported changes within 10 days. Where those changes result in a decrease of FAP benefits, the Department will not enact the change for an additional 12 days, as

required by BAM 220. Therefore, the Department should have redetermined Petitioner's eligibility for FAP benefits based on her husband's income no later than the first benefits period after October 10, 2014. The Department should have redetermined Petitioner's eligibility for FAP benefits based on her income no later than the first benefit period after November 22, 2014.

Due to Department error, Petitioner's eligibility for FAP benefits was not redetermined in a timely manner. Petitioner received FAP benefits based the false assumption that the household was not receiving any income at all. Later when the Department became aware that Petitioner was no longer eligible for FAP benefits based on household income, benefits were not closed for a few additional months, which can only be attributed to further Department error. Petitioner's case was not referred for an official review of whether there was an overissuance of FAP benefits until June 7, 2018.

The hearing record supports a finding that if earned income received by Petitioner's husband had been applied towards the group's eligibility for FAP benefits for November of 2014, the group would have been eligible for a \$399 allotment of FAP benefits, while the Department issued Petitioner \$649 of FAP benefits.

From December 1, 2014, through July 31, 2015, Petitioner continued to receive a \$649 allotment of FAP benefits, but she was not eligible for any of those benefits because the combined income of herself and her husband exceeded the gross income limit for a group of four.

Petitioner did not dispute the Department's determination of her eligibility for FAP benefits from November 1, 2014, through July 31, 2015, based on her actual circumstances at that time. Petitioner disputes the Department's authority to recoup the overissuance of FAP benefits cause by no fault of her own.

Petitioner has a right to a hearing to dispute determinations of her eligibility for FAP benefits as defined by BAM 600. On June 12, 2018, the Department sent Petitioner written notice that her eligibility for FAP benefits had been revised and that she had received benefits she was not eligible for. It is not disputed that Petitioner made a timely request for a hearing protesting the recoupment of the FAP overissuance.

A Department error overissuance is caused by incorrect actions (including delayed or no action) by the Department staff or processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between department divisions such as services staff.

- Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.).

Department of Health and Human Services Bridges Administrative Manual (BAM) 705 (January 1, 2016), p 1.

The hearing record supports a finding that Petitioner received FAP benefits that she was not eligible for and that it was Department error that cause her to receive an overissuance of FAP benefits.

The Department was aware in 2015, that Petitioner was receiving FAP benefits although she was not eligible for them based on her household income. Petitioner's case was not referred for a determination of whether she had received an overissuance of FAP benefits or a determination of the amount of overissued benefits until June 7, 2018. On June 12, 2018, the Department had determined that Petitioner had received a \$5,442 overissuance of FAP benefits and sent her a Notice of Overissuance form.

Petitioner is not entitled to keep FAP benefits that she is not eligible for. Since Petitioner received FAP benefits that she was not eligible for, Department policy requires that the overissuance be recouped.

Petitioner testified that the Department failed to grant her a meaningful pre-hearing conference.

However, regardless of whether a meaningful pre-hearing conference was held, there is still no entitlement to FAP benefits that Petitioner was not eligible for.

Petitioner testified that recoupment of the FAP overissuance would be a severe hardship to her family.

A request for a policy exception must be made from the Recoupment Specialist to the Overpayment, Research and Verification Section office outlining the facts of the situation and the client's financial hardship. The manager of the MDHHS Overpayment, Research and Verification Section has final authorization on the determination for all compromised claims. Department of Health and Human Services Bridges Administrative Manual (BAM) 725 (October 1, 2017), p 16.

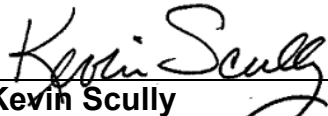
Therefore, the issue of whether recoupment of a FAP overissuance in this case would be a financial hardship on Petitioner's family cannot be addressed by Michigan Administrative Hearing System (MAHS) in this hearing decision.

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 determined that Petitioner received a \$5,442 overissuance of Food Assistance Program (FAP) benefits that must be recouped.

**DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

KS/hb

  
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**Kevin Scully**  
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**

Amber Gibson  
5303 South Cedar  
PO BOX 30088  
Lansing, MI 48911

Ingham County, DHHS

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Policy-Recoupment via electronic mail

**DHHS Department Rep.**

MDHHS-Recoupment  
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Lansing, MI 48909

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]