



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 27, 2018
MAHS Docket No.: 18-006301
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 via 3-way telephone conference on July 25, 2018, from Detroit, Michigan. Petitioner represented herself. The Department of Health and Human Services (Department) was represented by Denise Beard, Recoupment Specialist. Valarie Foley, Hearing Facilitator, was present in the hearing room with Petitioner but did not participate in the hearing.

ISSUE

Did the Department properly determine that Petitioner was overissued \$882 in Food Assistance Program (FAP) benefits from October 1, 2015 to December 31, 2015 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. Petitioner received FAP benefits from October 1, 2015 to December 31, 2015 (Exhibit 2).
2. From October 1, 2015 to December 31, 2015, the Department was budgeting Petitioner's employment with [REDACTED] (Employer 1) in determining Petitioner's FAP allotment.

3. The employee wage history report the Department ran showed that Petitioner received \$2,282 in gross employment income from [REDACTED] (Employer 2) in the fourth quarter of 2015 (Exhibit 3).
4. The Department stopped budgeting Petitioner's employment income from Employer 2 after August 2015 (Exhibit 4).
5. On July 27, 2016, the Department sent Employer 2 a Verification of Employment (VOE) requesting information concerning Petitioner's employment (Exhibit 7) but did not receive a response.
6. The Department recalculated Petitioner's FAP budgets for October 1, 2015 to December 31, 2015 to add income from Employer 2, averaging the income from the fourth quarter of 2015 as shown on the employee wage match report (Exhibit 8).
7. On May 24, 2018, the Department sent Petitioner a Notice of Overissuance notifying her that she received an \$882 overissuance of FAP benefits from October 1, 2015 to December 31, 2015 due to client error (Exhibit 9).
8. On [REDACTED] 2018, the Department received Petitioner's request for hearing disputing the alleged overissuance.

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 her income from Employer 2 and, as a result, she received more income than she was eligible to receive from October 1, 2015 to December 31, 2015 due to client error. Although the Department had been advised that Petitioner's son was incarcerated, the Department testified on the record that it had verified that the incarceration was during a period that Petitioner was not a FAP recipient and that the FAP overissuance it alleged was due solely to unreported income, not to the incarcerated status of Petitioner's son.

At the hearing, the Department presented evidence to show that Petitioner had received income from Employer 2 during the fourth quarter of 2015 but that it had only been budgeting Petitioner's income from Employer 1 during this period (Exhibits 3, 6). Petitioner testified that she always advised her worker of her employment status and indicated that she began employment at Employer 1 while she was employed at Employer 2 but soon stopped working at Employer 2. However, she could not recall exact dates.

In support of its position that Petitioner had unreported income from Employer 2, the Department presented an employee wage history report (Exhibit 3). Through an employee wage history database exchange, the Department can access wages paid on a quarterly basis to Department benefit recipients as reported by employers to the Michigan Talent Investment Agency. BAM 802 (April 2017), p. 1. When a client fails to provide verification of earnings, the Department uses the income shown on the wage match report to calculate the overissuance, averaging the income over the time period reported. BAM 802, p. 3.

In this case, the employee wage history report accessed for Petitioner shows that she received wages totaling \$2,282 from Employer 2 in the fourth quarter of 2015. The Department divided this amount by the three months in the fourth quarter of 2015 to conclude that she had \$760 in gross monthly income from Employer 2 for each month from October 2015 to December 2015 that was not being budgeted in determining Petitioner's FAP allotment.

A review of the evidence shows that the Department's calculation of Petitioner's income from Employer 2 for the fourth quarter is inconsistent with other evidence presented. The employee wage match shows that Petitioner received over \$2,000 in wages from Employer 2 during the fourth quarter of 2015, but no wages from Employer 2 in the third quarter of 2015. (Exhibit 3.) However, the evidence presented by the Department shows that the Department had budgeted \$806.04 in employment income from Employer 2 in July 2015 and \$735.95 in employment income from Employer 2 in August 2015 for a total of \$1,540 in wages from Employer 2 in the third quarter of 2015 (Exhibit 4). Because the employee wage history shows *no* wages from Employer 2 to Petitioner in the third quarter of 2015, the information used by the Department is inconsistent with the data in the employee wage match report. Because of these inconsistencies, it is unclear from the evidence presented that Petitioner received wages totaling \$2,282 in the fourth quarter of 2015. Because the Department used the \$2,282 figure to conclude that Petitioner had monthly unreported income of \$760 from Employer 2 in the fourth quarter of 2015, the Department has failed to satisfy its burden of showing that it properly calculated the alleged FAP overissuance for October 1, 2015 to December 31, 2015.

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 failed to

satisfy its burden of showing that it acted in accordance with Department policy when it calculated a FAP overissuance of \$882 against Petitioner for October 2015 through December 2015.

DECISION AND ORDER

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

The Department is ORDERED to commence the following within 10 days of the date of this Hearing Decision:

1. Delete the \$822 FAP overissuance against Petitioner for October 2015 to December 2015;
2. Cease any recoupment and/or collection action against Petitioner for the \$822 FAP overissuance; and
3. Supplement Petitioner for any amounts it has already recoup and/or collected from Petitioner for the \$822 FAP overissuance.

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) 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

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Petitioner

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

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