



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: September 18, 2018
MAHS Docket No.: 18-008303
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 September 13, 2018, from Lansing, Michigan. The Petitioner was represented by [REDACTED], Petitioner; and [REDACTED], Petitioner's spouse, who appeared at the hearing to testify. The Department of Health and Human Services (Department or Respondent) was represented by Dawn McKay, Recoupment Specialist.

Respondent's Exhibit A pages 1-44 were admitted as evidence.

ISSUE

Did the Department properly determine that Petitioner was overissued Food Assistance Program (FAP) benefits which 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. Petitioner was a FAP benefit recipient.
2. A re-determination was completed, and the client was re-approved for FAP benefits for the certification period beginning February 1, 2017.

3. At re-determination, Petitioner reported she had been laid off in November of 2016, and that her husband was laid off in December of 2016. They were only receiving unemployment compensation income.
4. Petitioner's husband returned to employment and received his first paycheck on May 21, 2017.
5. Per BAM 105 policy, Petitioner has the responsibility to report the changes in income within 10 days after receiving their first paychecks.
6. Neither change in income appears to have been reported timely to the year caseworker.
7. The recoupment specialist reviewed Petitioner's electronic case file and requested any available paper files and could not find any correspondence or other verification to show that Petitioner reported the changes in income.
8. The recoupment specialist determined that an over-issuance of FAP benefits occurred because Petitioners income and her husband's income was not being properly budgeted.
9. Over-issuance budgets were run for the months June 1, 2017, through December 31, 2017, and it was determined that Petitioner was overpaid \$ [REDACTED] in FAP benefits which must be recouped.
10. On July 27, 2018, the department notified Petitioner that she had an over-issuance of FAP benefits, which would be recouped.
11. On August 7, 2018, the department received a request for hearing to contest the Department's negative action.
12. On August 22, 2018, a pre-hearing telephone conference was held with Petitioner.
13. Petitioner indicated that she reported her income and her husband's return to seasonal employment; she turned in verification of their pay stubs at the [REDACTED] County Department of health and human services front desk office.
14. Petitioner's electronic case file in a search of available copies in the paper case file did not show any verification.
15. Petitioner also stated that she did not receive a semiannual review form.
16. On August 27, 2018, the Michigan Administrative Hearing System received a hearing summary and attached documents.
17. On September 13, 2018, the hearing was held.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). 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 of that decision. BAM 600.

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.

Pertinent Department policy dictates:

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1 (1/1/2016).

Recoupment is a MDHHS action to identify and recover a benefit over issuance. A recoupment specialist (RS) is the specialist assigned to process over issuances and act as liaison with OIG, reconciliation and recoupment section (RRS), and other personnel involved with recoupment and collections. BAM 700 page 2

An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or Department 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.).

If unable to identify the type, record it as an agency error. FIP, SDA, CDC and FAP Agency errors are not pursued if the estimated amount is less than \$250 per program. BEM 700, page 5

A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, and any of the following occurred:

- The hearing request is later withdrawn.
- MAHS denies the hearing request.
- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.
- The hearing decision upholds the Department's actions; see BAM 600. BAM 700 page 7

When a potential over issuance 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 over issuance potentially exists.
3. Determine if it was caused by Department, provider or client actions.
4. Refer any over issuances needing referral to the RS within 60 days of suspecting one exists.

Exception: Office of Quality Assurance (OQA) discovered over issuances must be referred to the RS within 7 days of receipt of the OQA findings. OQA has already verified one exists. FIP, SDA, CDC and FAP Within 60 days of suspecting an over issuance exists, complete a DHS-4701, Over issuance Referral, and refer the following over issuances to the RS for your office:

- All client and agency errors over \$250.
- All suspected IPV errors.
- All CDC provider errors BAM 700 page 10

In this case, Petitioner did receive notice that the Department committed an error when it calculated her FAP benefits from April of 2016, through November of 2016. Petitioner was given a higher shelter expense than she was entitled to.

Petitioner testified that she should not have to pay this amount back as it creates a hardship for her family. She did contact the Department in November of 2016 and left a message about her increased income. Petitioner's argument is a compelling equitable argument to be excluded from Department policy. This Administrative Law Judge has

no equity powers and cannot make a decision that is in contravention of Department policy.

Evidence on the record indicates the petitioner received an over-issuance of FAP benefits in the amount of \$ [REDACTED] based upon the fact that Petitioner's income was not properly budgeted. The Department is required to recoup over-issued benefits.

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 finds that the Department has established by the necessary competent, material and substantial evidence on the record that it acted in accordance with Department policy when it determined that Petitioner has been over-issued FAP benefits in the amount of \$ [REDACTED] based upon Department error, which must be recouped. Even if the error was made by the agency, the Department is compelled by Department policy to recoup any benefits in excess of the amount of \$250.00. The Department has established its case by a preponderance of the evidence.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**. The Department is **ORDERED** to initiate the Recoupment process in accordance with Department policy within ten days of receipt of this Decision and Order.

LL/bb



Landis Lain
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 Department Rep.

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

DHHS

Patricia Marx
1672 US 31 South
Manistee, MI 49660

Manistee County, DHHS

BSC1 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
MI [REDACTED]