



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: September 27, 2018
MAHS Docket No.: 18-008585
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 20, 2018, from Lansing, Michigan. [REDACTED] appeared as a member of the FAP group. The Department of Health and Human Services (Department or Respondent) was represented by Vicki DeKruger, Recoupment Specialist, and Denise Kroff, Hearings Coordinator.

Respondent's Exhibit A pages 1-105 were admitted as evidence.

ISSUE

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

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], 2017, Petitioner applied for FAP and cash assistance. Petitioner did not report any employment or other income. Petitioner was advised and acknowledged that she is required to report any changes to the Department within 10 days.
2. On February 6, 2017, the Department issued a Notice approving FAP without budgeting any income effective January 17, 2017 through February 28, 2017.

3. On December 6, 2017, Petitioner filed a redetermination reporting income with [REDACTED] not previously reported. No other income or employment was report for her spouse—the case name.
4. On December 6, 2017, a DHS 4638 Wage Match Client Notice for employment with [REDACTED] shows that Brittany began employment March 8, 2017; the form does not appear to have been completed by the employer; it is not signed by the employer.
5. On March 15, 2018, a DHS-4701 overissuance referral was sent to Recoupment.
6. On July 14, 2018, the Department received information from [REDACTED] that reported that Petitioner's spouse began employment on October 3, 2017.
7. After investigation and review, on August 13, 2018, the Department issued a Notice of Overissuance having determined that due to client error Petitioner's FAP group in the name of her spouse was overissued \$2,966.00 in FAP benefits for the period from May 1, 2017, to May 31, 2018. Ex A.101.
8. On August 27, 2018, Petitioner filed a Request for Hearing to contest the Department's negative action.

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 overissuance. BAM 700, p 1 (1/1/2016).

Recoupment is a MDHHS action to identify and recover a benefit overissuance. A recoupment specialist (RS) is the specialist assigned to process an overissuance 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 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.

Exception: Office of Quality Assurance (OQA) discovered overissuance 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 overissuance exists, complete a DHS-4701, Overissuance Referral, and refer the following overissuance 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

On August 21, 2018, Petitioner's spouse—[REDACTED]—filed a hearing request to appeal the Department's notice of overissuance and recoupment stating "I submitted all prove [sic] of income to DHS. My case worker before approved me for food assistance. If my case worker approved me...I should not have to pay this fee back...I did everything I was supposed to do..."

Petitioner makes two arguments: first, that she did submitted proof and thus, should not have to repay. Petitioner is right with regard to her income—she did report, albeit months after she began employment. Petitioner was required to report any changes in income within 10 days. Petitioner failed to report her income for months, which is why the overissuance is so large. In addition, [REDACTED]'s income was not reported at all.

Petitioner's second or alternative argument is that if the benefits were issued and Petitioner's error not caught by the Department, she should be able to prevail. However, even if Petitioner had evidence to show that the error was Department error, which it is not, Petitioner would still be required to repay any benefits issued to her to which she was not entitled to receive.

In this case, a review of the credible and substantial evidence of record supports finding that the error here met the definition of client error. Specifically, Petitioner was on notice and acknowledged that she and/or her spouse who is the named FAP case name was responsible to report all changes within 10 days, which includes any income changes. Evidence shows that [REDACTED]'s income with [REDACTED] began March 9, 2017 and was not reported until December 6, 2017. Evidence further shows that [REDACTED]'s employment with [REDACTED] began October 3, 2017, and was not disclosed the income on the December 6, 2017, redetermination form. A review of the FAP budgets budgeting previously unreported income shows that the overissuance totals \$2,966.00.

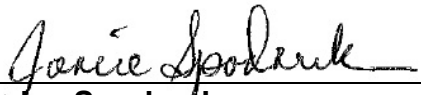
Petitioner did not dispute any of the actual FAP budget calculations.

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 overissued FAP benefits in the amount of \$2,966.00 based upon client error, which must be recouped. 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.

JS/hb



Janice Spodarek
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

Petitioner

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