



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: December 21, 2018
MAHS Docket No.: 18-010744
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 7 CFR 273.15, and Mich Admin Code, R 792.11002. After due notice, a hearing was held by telephone from Lansing on December 19, 2018. Petitioner, [REDACTED] [REDACTED] appeared and represented herself. Recoupment Specialist, Tracy Upshaw, appeared and represented the Department. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 25-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Does Petitioner owe the Department a debt for Food Assistance Program (FAP) benefits that were overissued to her?

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. While Petitioner was receiving FAP benefits, Petitioner received proceeds from a settlement.
3. On August 8, 2015, Petitioner reported to the Department on a completed Redetermination that she had more than \$ [REDACTED] deposited.

4. The Department did not take any action to find Petitioner ineligible due to her assets. The Department continued to issue FAP benefits to Petitioner through July 2016.
5. As of July 31, 2016, Petitioner had more than \$ [REDACTED] deposited.
6. In August 2016, the Department discovered that it erroneously issued FAP benefits to Petitioner while she was ineligible due to excessive assets.
7. On July 17, 2018, the Department notified Petitioner that it overissued her \$ [REDACTED] in FAP benefits from October 2015 through July 2016.
8. On [REDACTED] [REDACTED] [REDACTED] Petitioner filed a hearing request to dispute 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.

In order to be eligible for FAP benefits, a client must meet the Department's asset limit. Countable assets cannot exceed the asset limit in BEM 400 (May 1, 2018). An asset is countable if it is available and not it is not a specifically excluded asset. For FAP benefits, the asset limit is \$5,000.00. BEM 400, p. 5-6. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 3. Here, Petitioner's assets exceeded the asset limit for FAP benefits starting in August 2015 because Petitioner had more than \$5,000 deposited. Petitioner's assets continued to exceed the asset limit for FAP benefits through July 2016. Since Petitioner's assets exceeded the asset limit for FAP benefits, Petitioner was ineligible for FAP benefits and all FAP benefits issued to her during this time period were overissued.

When a client receives more benefits than she was entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 1, 2018), p. 1. The overissuance amount is the amount of benefits in excess of the amount the client was entitled to receive. *Id.* at p. 2. Overissuances for FAP that result from the Department's error must be pursued by the Department when the amount is greater than or equal to

\$250. BAM 705 (October 1, 2018), p. 1. Here, Petitioner received an overissuance of \$ [REDACTED] due to the Department's error, so the Department was required to attempt to recoup it. However, the Department did not act timely in accordance with its policies and the applicable law.

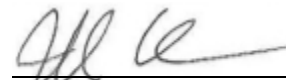
A state agency shall collect an overissuance of benefits in accordance with the requirements the state agency establishes for providing notice. 7 USC 2022(b)(4). The Department has established its requirements for processing overissuances in BAM 700. When a potential overissuance is discovered, the Department must obtain initial evidence that an overissuance exists and refer it to a recoupment specialist within 60 days. BAM 700, p. 10. Within 60 days of the referral, the recoupment specialist must then determine if an overissuance occurred. BAM 700, p. 11. If the recoupment specialist determines that an overissuance occurred, then the recoupment specialist must send a notice to the client within 90 days of the date the recoupment specialist determined that an overissuance occurred. BAM 700, p. 11. Here, the Department did not act in accordance with its policies or the applicable law because the Department did not issue an overissuance notice to Petitioner until more than 210 days after it discovered a potential overissuance. The Department discovered the potential overissuance in August 2016 and it did not issue an overissuance notice to Petitioner until July 2018.

DECISION AND ORDER

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 did not act in accordance with its policies and the applicable law when it issued its recoupment notice on July 17, 2018, for an overissuance of \$ [REDACTED] in FAP benefits. Therefore, a debt is not established.

IT IS ORDERED that the Department's July 17, 2018, Notice of Overissuance is **REVERSED**.

JK/nr



Jeffrey Kemm
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

Kimberly Kornoelje
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Kent County DHHS- via electronic mail

DHHS Department Rep.

MDHHS-Recoupment
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Petitioner

[REDACTED]
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[REDACTED]