



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 17, 2018
MAHS Docket No.: 18-011701
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 December 12, 2018, from Lansing, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Denise Beard, Recoupment Specialist, Audrea Jones, Eligibility Specialist, and Christina Williams, Hearings Facilitator. During the hearing, a 59-page packet of documents was offered and admitted as Exhibit A, pp. 1-59.

ISSUE

Did Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup and/or collect?

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 an ongoing recipient of FAP benefits.
2. During the entire year of 2016, Petitioner operated a corporation named [REDACTED] [REDACTED] [REDACTED] ([REDACTED]). According to the tax returns filed by Petitioner, [REDACTED] had gross receipts of \$ [REDACTED] in 2016. Additionally, the tax returns show that the costs of goods sold by [REDACTED] were \$ [REDACTED]. The tax returns have other itemized deductions totaling \$ [REDACTED]. For the year, the tax return shows that [REDACTED] had \$ [REDACTED] in net income.

3. Petitioner did not report his income from [REDACTED] to the Department when asked to provide information. On a Redetermination Petitioner returned to the Department during 2016, Petitioner was asked "Does anyone in your household have income?" In response, Petitioner answered "No." Exhibit A, pp. 6-11.
4. From January 1, 2016, through September 30, 2016, Petitioner received \$ [REDACTED] per month in FAP benefits. From October 1, 2016, through December 31, 2016, Petitioner received \$ [REDACTED] per month in FAP benefits. Thus, over the course of 2016, Petitioner received \$ [REDACTED] in FAP benefits. Exhibit A, pp. 14-15, 30.
5. When calculating Petitioner's monthly FAP benefits for 2016, the Department did not factor in any of the income Petitioner received from operating Mobile. Exhibit A, pp. 16-23.
6. After receiving the tax return from Mobile, the Department worker involved forwarded the matter to a Ms. Beard via an Overissuance Referral, Form 4701, on December 28, 2017. Exhibit A, p. 5.
7. On November 1, 2018, Ms. Beard issued to Petitioner a Notice of Overissuance, Forms 4358-A through 4358-D. Exhibit A, pp. 55-59.
8. On [REDACTED] [REDACTED] [REDACTED] Petitioner submitted to the Department a request for hearing objecting to the Department's finding that Petitioner was overissued FAP benefits in 2016.

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 this case, the Department is seeking to recoup an alleged \$ [REDACTED] overissuance of FAP benefits issued to Petitioner. The Department alleges that the overissuance was caused by the Petitioner's error. The Department now seeks to recoup and/or collect that amount from Petitioner.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700, p. 1. A client error overissuance occurs when the client receives more benefits than he or she was entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 6. Recoupment of overissuances caused by client errors are not pursued if the estimated amount is less than \$250 per program. BAM 715 (January 2016), p. 6. However, if the overissuance amount is \$250 or higher, the Department must attempt to recoup the overissuance amount. BAM 715, p. 6.

In this case, Petitioner received a total of \$ [REDACTED] in FAP benefits for the time period of January 1, 2016, through December 31, 2016. At the time the Department was dispensing the FAP benefits, it was not aware of Petitioner's income from [REDACTED]. Thus, when calculating Petitioner's FAP benefit amount, the Department did not factor in Petitioner's income from [REDACTED] causing his budgeted income to be substantially lower than his actual income. The failure to include Petitioner's income from [REDACTED] into the budget resulted in the Department overissuing FAP benefits to Petitioner. Thus, the Department has presented sufficient evidence to establish that there was an overissuance of FAP benefits from January 1, 2016, through December 31, 2016.

However, the Department did not present sufficient evidence to substantiate its calculation of the overissuance amount. The Department calculated that during the overissuance period, the Department overissued Petitioner \$ [REDACTED] in FAP benefits. During the hearing, the Department provided the monthly overissuance budgets used to determine the amount Petitioner should have received. In each of the budgets, the Department determined that Petitioner had \$ [REDACTED] in earned self-employment income that had previously not been budgeted.

When asked to explain how the Department came up with the \$ [REDACTED] monthly earned income amount, Ms. Beard testified that she applied the Income from Self-Employment Policy. BEM 502 (January 2017), pp. 1-9. That policy states that countable income from self-employment equals the total proceeds of that self-employment minus allowable expenses. BEM 502, p. 3. Allowable expenses are the higher of 25 percent of the total proceeds or actual expenses. BEM 502, p. 3. Ms. Beard took the total gross income received by Mobile (\$ [REDACTED]) reduced it by 25%, then divided it by 12 to get the monthly amount of \$ [REDACTED].

On the very same document that Ms. Beard obtained the gross income information, there was sufficient information to conclude that Petitioner's actual allowable expenses were substantially greater than the 25% reduction that was applied. Because Petitioner's tax return showed actual allowable expenses that were greater than 25%, the Department erred in applying the 25% reduction. Thus, the Department's decision is reversed with respect to its calculation of alleged overissuance.

The remedy is to allow Petitioner the opportunity to verify the expenses claimed in the tax document. If Petitioner is able to verify allowable expenses greater than 25% of the total proceeds from Mobile, the Department shall take that into consideration when recalculating Petitioner's overissuance.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish a client error FAP benefit overissuance to Petitioner. However, the Department did not present sufficient evidence to determine the amount of that overissuance.

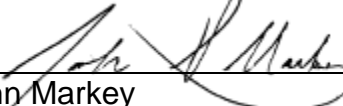
DECISION AND ORDER

Accordingly, the Department is **AFFIRMED** in part and **REVERSED** in part. The Department established that Petitioner received an overissuance of FAP benefits from January 1, 2016, through December 31, 2016. The Department did not, however, establish the amount of the overissuance.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine the amount of the overissuance of FAP benefits to Petitioner from January 1, 2016, through December 31, 2016;
2. If there is conflict or uncertainty regarding any relevant issue, such as income or expenses, follow Department policy regarding verifications by allowing Petitioner the opportunity to present information related to the relevant issue in question; and
3. Issue Petitioner a new Notice of Overissuance in accordance with Department policy.

JM/nr



John Markey
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

Jeanenne Broadnax
25637 Ecorse Rd.
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Petitioner

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