



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 20, 2018
MAHS Docket No.: 18-011703
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 herself. The Department of Health and Human Services (Department) was represented by Kim Kilmer, Hearings Coordinator, and Dawn McKay, Recoupment Specialist. During the hearing, a 105-page packet of documents was offered and admitted as Exhibit A, pp. 1-105.

ISSUE

Did the Department properly calculate the amount of the overissuance of Food Assistance Program (FAP) benefits that Petitioner received from November 21, 2016 through October 31, 2017?

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] 19, 2016, Petitioner submitted to the Department an application for FAP benefits with a FAP group size of four, including Petitioner, her husband [REDACTED] and two children. Exhibit A, pp. 41-45.
2. During the application process, Petitioner informed the Department that [REDACTED] was working for Direct TV and provided verifications of his first three paystubs. Exhibit A, pp. 41-45.

3. The first paystub was for a partial pay per period and showed [REDACTED] only earning \$[REDACTED]. The next two, however, were for full two-week pay periods and amounted to \$[REDACTED] and \$[REDACTED]. Exhibit A, pp. 41-45.
4. The Department approved Petitioner's FAP application and issued Petitioner FAP benefits of \$[REDACTED] for November of 2016 and \$[REDACTED] per month from December 1, 2016, through October 31, 2017. Exhibit A, pp. 41-45.
5. For the entire time period from November 21, 2016, through October 31, 2017, the Department calculated Petitioner's benefits based on a monthly income of \$[REDACTED]. Exhibit A, p. 41-45.
6. Petitioner's group income was substantially higher than \$[REDACTED] per month. Exhibit A, p. 41-45.
7. On August 15, 2018, the Department issued to Petitioner a Notice of Overissuance alleging that Petitioner received an OI of FAP benefits in the amount of \$[REDACTED] from November 21, 2016, through October 31, 2017, due to agency error. The Department conceded that it improperly budgeted [REDACTED] monthly income. Exhibit A, pp. 41-45.
8. On August 22, 2018, Petitioner filed a request for hearing objecting to the Department's demand that Petitioner repay the Department. Exhibit A, pp. 41-45.
9. On October 17, 2018, an administrative hearing regarding Petitioner's August 22, 2018 request for hearing was held before the undersigned. Exhibit A, pp. 41-45.
10. On October 18, 2018, the undersigned issued a decision in MAHS Docket No. 18-008924. That decision found that the Department established that Petitioner received an overissuance of FAP benefits from November 21, 2016 through October 31, 2017. However, the Department was found to have not met its burden of proof regarding the amount of the overissuance. Thus, the matter was remanded back to the Department to determine the amount of the overissuance and issue a new notice to Petitioner informing her of the new calculation. Exhibit A, pp. 41-45.
11. As of the date of the hearing in this matter, Petitioner had not filed with the hearing system a request for rehearing or reconsideration with respect to the October 18, 2018 decision. Thus, the October 18, 2018 decision in MAHS Docket No. 18-008924 became final. Michigan Administrative Code, Rule 492.11015(1) and (5).
12. Pursuant to the October 18, 2018 decision in MAHS Docket No. 18-008924, the Department issued to Petitioner an October 31, 2018 Notice of Overissuance [REDACTED] that Petitioner received an overissuance of FAP benefits in the amount of \$3,599. Exhibit A, pp. 7-9.
13. On [REDACTED] [REDACTED] [REDACTED] Petitioner submitted to the Department a request for hearing objecting to the Department's actions.

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 overissuance of FAP benefits issued to Petitioner. In a case involving the same FAP benefits, the Department already established that Petitioner received an overissuance of FAP benefits for the time period involved in this case. As Petitioner did not request a rehearing or reconsideration of that decision or appeal it to a higher court, the finding that Petitioner received an overissuance for the time period in question has become final. Thus, the only issue involved in this case is whether the Department properly calculated the overissuance at \$ [REDACTED]

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 2018), 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. An agency error overissuance is caused by incorrect action (including delayed or no action) by the Department. BAM 705 (January 2016), p. 1. Recoupment of overissuances caused by agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 705, p. 1. However, if the overissuance amount is \$250 or higher, the Department must attempt to recoup the overissuance amount. BAM 700, p. 1.

In this case, Petitioner received \$ [REDACTED] in FAP benefits for the time period of November 21, 2016, through November 30, 2016, and \$ [REDACTED] in FAP benefits each month from December of 2016 through October of 2017. When calculating Petitioner's FAP benefit amount, the Department severely underestimated the group's monthly earned income, despite Petitioner providing the Department with paystubs that showed [REDACTED] earned substantially more than the amount budgeted. The Department's failure to include Petitioner's income 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 November 21, 2016, through October 31, 2017.

During the hearing, the Department presented new overissuance budgets and accompanying documentary evidence to substantiate the figures used in those budgets. After reviewing the income and expense information for each of the involved months, the Department's ultimate conclusion that Petitioner received an overissuance of \$ [REDACTED] was correct. Thus, the Department properly found that Petitioner received an overissuance of FAP benefits totalling \$ [REDACTED]. Accordingly, the Department's decision is affirmed.

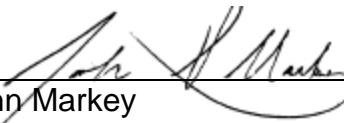
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department established an agency error FAP benefit overissuance to Petitioner in the amount of \$ [REDACTED].

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

The Department is **ORDERED** to initiate collection procedures for a \$ [REDACTED] overissuance, less any amounts already recouped or collected, 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

Kimberly Kilmer
800 Watertower
Big Rapids, MI
49307

Mecosta County DHHS- via electronic
mail

DHHS Department Rep.

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

Petitioner

[REDACTED]
[REDACTED]
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[REDACTED]