



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: February 19, 2019
MAHS Docket No.: 19-000324
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on February 13, 2019, from Lansing, Michigan. Petitioner was represented by herself. The Department was represented by Mark McBride and Ryan Clemmons and Darcus Braswell, Recoupment Specialist.

ISSUE

Did the Department of Health and Human Services (Department) properly determine Petitioner's eligibility for 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 September 19, 2017, the Department sent Petitioner a Notice of Overissuance (DHS-4358-A) instructing her that she had received a \$1,769 overissuance of Food Assistance Program (FAP) benefits due to Department error. Exhibit A, p 79-87.
2. Petitioner is an ongoing Food Assistance Program (FAP) recipient. Exhibit A, pp 5-12.
3. Petitioner received Food Assistance Program (FAP) benefits in the amounts of \$83 for January of 2019 with a \$10 recoupment, \$92 for December of 2018 with a \$10 recoupment, \$90 for November of 2018 with a \$10 recoupment, a \$15 supplement on December 27, 2018, with all \$15 being recouped, and \$109 in October of 2018, with no recoupment. Exhibit A, p 5.

4. On January 9, 2019, the Department received Petitioner's request for a hearing. Exhibit A, p 3.

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.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

The standard administrative recoupment percentage for active FAP cases is 10% or \$10, whichever is greater, for agency error. In addition, FAP supplements to restore lost benefits are automatically offset to repay FAP overissuances. Department of Human Services Bridges Assistance Manual (BAM) 725 (October 1, 2017), pp 7-8.

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. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (October 1, 2018), pp 3-4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (October 1, 2018), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

On September 19, 2017, the Department sent Petitioner a Notice of Overissuance form. Petitioner's January 9, 2019, request for a hearing is not timely with respect to the establishment of an overissuance, and there is no entitlement to a hearing on the establishment of the overissuance.

Petitioner testified that the amount of FAP benefits she receives is incorrect.

The hearing record indicates that the overissuance, which was caused by Department error, is being recouped in accordance with BAM 725, which requires the Department to recoup 10% of the monthly allotment of FAP benefits, or \$10, whichever is higher. The Department is also required to apply supplemental FAP benefits to repay FAP overissuances. The hearing record indicates that the Department has been recouping \$10 each month from Petitioner's FAP benefits because her monthly allotment of FAP benefits is less than \$100, except that a \$15 supplement was recouped on December 27, 2018.

Petitioner argued that the Department is not processing her reported medical expenses in a timely manner, and that if the Department was processing her reported medical expenses in a timely manner then it would not be necessary to issue an FAP supplement. The result is that the Department recoups the entire supplement instead of a standard recoupment from the regular monthly allotment.

The recoupment from Petitioner's FAP benefits is processed through an automated system and summary of FAP benefits granted to Petitioner supports a finding that the amount of recoupment has been determined in accordance with BEM 725. Further, if the \$15 supplemental FAP benefits paid on December 27, 2018, had been paid at the same time as Petitioner's November allotment, then the Department would have recouped \$10.50 instead of \$10.

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 acted in accordance with Department policy when it determined Petitioner's eligibility for Food Assistance Program (FAP) benefits after recouping an overissuance of benefits.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/dh



Kevin Scully
Administrative Law Judge
for Robert Gordon, 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

Sarina Baber
22 Center Street
Ypsilanti, MI 48198

Washtenaw County, DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

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