



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: April 12, 2019
MAHS Docket No.: 19-000851
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 April 9, 2019, from Lansing, Michigan. Petitioner was represented by Attorney Annette Skinner. The Department of Health and Human Services (Department) was represented by AAG Kyle Bruckner. Witnesses on behalf of the Department included Amber Gibson, Hearings Facilitator, and Toni Grimes, Recoupment Specialist.

Exhibit A.24 was admitted into to the record.

ISSUE

Did the Department properly determine that Petitioner was overpaid \$2,124.00 in FAP benefits due to agency error for the benefit period from November 1, 2017, to October 31, 2018?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times to the issue here, Petitioner has been a beneficiary of the FAP program.

2. All applicants, including Petitioner, signed an agreement at application and at redetermination that they understand that any overissuance, including agency error, would have to be repaid.
3. In October of 2018 the Department reviewed Petitioner's FAP budget. At that time, the Department discovered that it had failed to budget Petitioner's RSDI income during the certification period from November 1, 2017, through October 31, 2018. During that time, Petitioner received \$192.00 per month in FAP benefits with no income budgeted. A.14-15.
4. The Department recalculated Petitioner's eligibility budgeting the RSDI income. The new budget calculated Petitioner's eligibility at \$15.00 per month, resulting in an overpayment of \$177.00 per month, totaling \$2,124.00. Exhibit A.17-18.
5. On October 15, 2018, the Department issued a Notice of Overissuance informing Petitioner that due to an agency error Petitioner was overpaid \$2,124.00 in FAP benefits during the period of November 1, 2017, to October 31, 2018.
6. On December 17, 2018, the Department issued a recoupment notice. Exhibit A.21.
7. On January 18, 2019, Petitioner filed hearing requests disputing the recoupment.
8. Petitioner stipulated that there is no MA issue. Petitioner does not dispute the FAP budget calculations.

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.

Applicable policy to income budgeting is found primarily at BEM 550 and 556. Corresponding federal regulations are found at 7 CFR 273.9, 273.10(c), and 273.11. Benefit overissuance policy is found primarily in BAM 700. Recoupment of agency error overissuance is found primarily in BAM 705. Federal regulations are found at 7 CFR 273.18.

In this case, pursuant income policy and corresponding federal regulations the Department is required to count RSDI income in the FAP budget, with certain deductions and/or exceptions not disputed here. In addition, the Department is under a strong mandate to collect any overpayments to FAP recipients, regardless as to whether they are client or agency error. Failure to do so can subject the State of Michigan to significant financial penalties.

In addition, all recipients are charged with the knowledge that the Department can and will collect FAP overissuance whether due to client or agency error by signing and acknowledging for the receipt of benefits prior to issuances.

Here, Petitioner did not dispute any of the calculations and/or budgets submitted by the Department herein. Rather, Petitioner makes an equitable argument that because it was agency error, it is unfair to collect from Petitioner. However, as indicated, the Department is required to collect or recoup in both instances, and the undersigned has no power to grant any equitable remedy.


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 that Petitioner was overpaid \$2,124.00 in FAP benefits for the benefit period from November 1, 2017, to October 31, 2018, due to agency error.

The Department may engage in any collection or recoupment as permitted by policy and procure, deducting any offsets already collected.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

JS/dh



Janice Spodarek
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

Amber Gibson
5303 South Cedar
PO BOX 30088
Lansing, MI 48911

Ingham County, DHHS

EQAD via electronic mail

D. Smith via electronic mail

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