



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

Date Mailed: June 7, 2019
MOAHR Docket No.: 19-004741
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 June 5, 2019, from Detroit, Michigan. Petitioner was represented by Authorized Hearing Representative [REDACTED]. Also appearing on behalf of Petitioner was witness Connie Meyers. The Department of Health and Human Services (Department) was represented by Dawn McKay, Recoupment Specialist. During the hearing, a 30-page packet of documents was offered and admitted as Exhibit A, pp. 1-30.

ISSUE

Did the Department properly establish that Petitioner received an agency error overissuance of Food Assistance Program (FAP) benefits from May 1, 2018 through April 30, 2019?

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 in a group of one since 2012. At all relevant times, Petitioner's brother, [REDACTED] has been her Authorized Representative for conducting business with the Department.
2. In August 2013, Petitioner moved to an assisted living facility. From the time she moved into the facility through at least the date of the hearing, Petitioner has lived in an assisted living facility that provides her with at least two meals per day.

3. [REDACTED] informed the Department at the time of the move that Petitioner had moved to an assisted living facility and that the assisted living facility provided her with meals.
4. During each annual renewal, [REDACTED] informed the Department of Petitioner's living situation.
5. Petitioner received FAP benefits from 2013 through at least April 30, 2019. From May 1, 2018 through April 30, 2019, Petitioner received \$192 per month, totaling \$2,304. Exhibit A, pp. 14-15; 26-27.
6. On April 16, 2019, the Department issued to Petitioner a Notice of Overissuance informing Petitioner that the Department believed that due to an error by the Department, Petitioner had been overissued \$2,304 in FAP benefits from May 1, 2018 through April 30, 2019. The document stated that Petitioner would be required to pay back those benefits. Exhibit A, pp. 26-30.
7. On [REDACTED] 2019, Petitioner, through [REDACTED] submitted to the Department a request for hearing objecting to the Department's efforts to establish and collect 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 this case, the Department alleges that Petitioner received a \$2,304 overissuance of FAP benefits from May 1, 2018 through April 30, 2019 as a result of the Department's error. The Department acknowledges that the alleged overissuance was attributable to a mistake made by the Department. Specifically, despite Petitioner reporting for years that she lived in a facility that provided her meals, the Department continued to approve her for FAP benefits. However, the Department's position is that even though it was at fault for the alleged overpayment, the law and regulations require the Department to attempt to establish the overissuance and collect the erroneously overpaid benefits. Petitioner objects to the Department's attempt to establish and collect the alleged overissuance as Petitioner diligently complied with all requirements and repayment would impose a major hardship on Petitioner.

When a person lives in a facility that provides its residents a majority of their meals, the person is generally ineligible for FAP benefits. BEM 265 (April 2018), p. 2. 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. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, p. 1.

An agency error overissuance is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 5. For agency error overissuances, the overissuance period starts the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the recoupment specialist, whichever 12 month period is later. BAM 705 (January 2016), pp. 5-6. The overissuance period ends the month before the benefit is corrected. BAM 705, pp. 5-6. Regardless of whether the overissuance was caused by client error or agency error, the Department must attempt to establish any alleged overissuance over \$250. BAM 700, p. 5; BAM 715 (October 2017), p. 7.

From the time Petitioner moved into the assisted living facility that provided her meals, Petitioner was no longer eligible to receive FAP benefits. Even though [REDACTED] timely, repeatedly, and appropriately informed the Department of the living situation that rendered Petitioner ineligible for the benefits, the Department kept approving Petitioner and granting her FAP benefits. As Petitioner was ineligible for the FAP benefits she received from the time she went into the facility through present, those benefits are appropriately considered overissuances.

Because the overissuance was caused by the Department's error, the Department may only attempt to establish an overissuance for a maximum time period of 12 months. Thus, the Department's asserted overissuance period of May 1, 2018 through April 30, 2019 is an appropriate overissuance period in this case. During that period, the Department issued to Petitioner \$2,304 in FAP benefits. Petitioner was not eligible for any FAP benefits. Accordingly, the Department properly established an overissuance of \$2,304 in FAP benefits issued to Petitioner from May 1, 2018 through April 30, 2019.

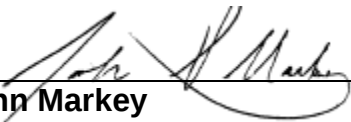
Petitioner's objection to the unfairness of the Department's actions in this case amount to equitable arguments. Unfortunately, the undersigned Administrative Law Judge does not have any equitable powers and must follow the law and Department policy, which compels the Department to seek to establish overissuances, even when those overissuances were caused by the Department's own errors.

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 received a \$2,304 Agency Error overissuance of FAP benefits from May 1, 2018 through April 30, 2019. The Department is entitled to initiate recoupment and/or collection activities for the overissuance, less any amounts already recouped and/or collected, pursuant to the law and Department policy.

DECISION AND ORDER

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

JM/cg



John Markey
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR 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

Via Email:

MDHHS-Recoupment
MDHHS-Grand Traverse- Hearings
M. Holden
D. Sweeney
BSC1- Hearing Decisions
MOAHR

**Authorized Hearing Rep. –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]

**Petitioner –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]