



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: June 7, 2019
MOAHR Docket No.: 19-004745
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 appeared and represented herself. The Department of Health and Human Services (Department) was represented by Dawn McKay, Recoupment Specialist. During the hearing, a 32-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-32.

ISSUE

Did the Department properly determine that Petitioner received an agency error overissuance of Food Assistance Program (FAP) benefits from November 1, 2018 through March 31, 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 from the Department.
2. On September 1, 2018, Petitioner started receiving new unearned income totaling \$200.09 per month. Exhibit A, p. 16.
3. On [REDACTED] 2018, Petitioner timely reported the new income to the Department.
4. The Department did not properly budget the new income when determining Petitioner's monthly FAP benefits thereafter.

5. On April 19, 2019, the Department issued to Petitioner a Notice of Overissuance informing Petitioner that the Department believed it had overissued to Petitioner \$391 in FAP benefits from November 1, 2018 through March 31, 2019 on account of the Department's error in failing to budget the reported increase in income. Exhibit A, pp. 28-32.
6. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's April 19, 2019 notice.

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 \$391 overissuance of FAP benefits from November 1, 2018 through March 31, 2019 as a result of the Department's error in budgeting Petitioner's properly reported increase in income. The Department acknowledges that the alleged overissuance was attributable to a mistake made by the Department. 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 she did everything she was supposed to do.

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 November 1, 2018 through March 31, 2019, the Department issued to Petitioner monthly FAP benefits of \$94. In determining Petitioner's monthly FAP amount for that time period, the Department neglected to budget the monthly \$200.09 in unearned income that Petitioner timely and properly reported to the Department. When that income was added into the budget, it was determined that Petitioner was overissued \$391 in FAP benefits during that time period.


After reviewing the record, the Department has met its burden of proving that Petitioner received a \$391 overissuance of FAP benefits from November 1, 2018 through March 31, 2019 on account of the Department's failure to properly budget Petitioner's reported increase in income. 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, as was the case here.

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 \$391 Agency Error overissuance of FAP benefits from November 1, 2018 through March 31, 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-Mecosta- Hearings
MDHHS-Recoupment
M. Holden
D. Sweeney
BSC3- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

