



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: July 3, 2019
MOAHR Docket No.: 19-005556
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, a telephone hearing was held on June 27, 2019, from Lansing, Michigan. Petitioner was represented by herself. The Department of Health and Human Services was represented by Kurt Sperry. Stephanie Specking also appeared on behalf of the Department.

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 [REDACTED] [REDACTED] 2017, the Department received Petitioner's application for Food Assistance Program (FAP) benefits. Exhibit A, pp 2-21.
2. On January 31, 2017, the Department notified Petitioner that her Food Assistance Program (FAP) application had been approved and that she would receive a \$16 monthly allotment of benefits starting February 1, 2017. Exhibit A, pp 22-27.
3. Petitioner receives Retirement, Survivors, and Disability Insurance (RSDI) benefits from the Social Security Administration (SSA), she has a Medicare Part B start date of September 1, 2016, and a Medicare Part B buy-in start date of February 1, 2017. Exhibit A, pp 28-30.

4. Due to Department error, the Department gave Petitioner a deduction for her Medicare Part-B premium despite the fact that this expense was being paid for her. Exhibit A, pp 28-30.
5. Petitioner received Food Assistance Program (FAP) benefits totaling \$1,823 from January 1, 2018, through March 31, 2019. Exhibit A, pp 34-36.
6. On May 2, 2019, the Department sent Petitioner a Notice of Overissuance (DHS-4358-A) instructing her that a \$437 overissuance of Food Assistance Program (FAP) benefits would be recouped. Exhibit A, pp 68-72.
7. On May 24, 2019, the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program benefits. Exhibit A, p 1.

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.

The Department will consider only the medical expenses of senior/disabled/veteran (SDV) persons in the eligible group or SDV persons disqualified for certain reasons. A FAP group is not required to but may voluntarily report changes during the benefit period. Department of Health and Human Services Bridges Eligibility Manual (BEM) 554 (August 1, 2017), pp 8 – 9.

The Medical Expenses amount is determined by totaling allowable monthly medical expenses (rounded to whole dollar amounts) and reducing this amount by a \$35 medical deduction. Department of Health and Human Services Bridges Eligibility Manual (BEM) 556 (July 1, 2013), p 4.

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 overissuance period begins the first month (or first pay period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the RS, whichever 12-month period is later.

Department of Health and Human Services Bridges Administrative Manual (BAM) 705 (October 1, 2018), p 5.

Petitioner was an ongoing FAP recipient from January 1, 2018, through February 28, 2019. Due to Department error, the Department was giving her credit for a medical expense that she was not actually paying for herself. Petitioner was given credit for a \$105 Medicare Part B premium less the standard \$35 deduction as directed by BEM 556, but this premium was being paid for under the Medicare Savings Plan (MSP). If the Department had not mistakenly given her credit for this expense, then Petitioner would have been eligible for only \$1,371 of those benefits. Therefore, Petitioner received an overissuance of FAP benefits due to Department error.

However, BAM 705 limits recoupment of overissuances of FAP benefits due to Department error to a 12-month period. Therefore, the Department is entitled to recoup a \$375 overissuance of FAP benefits from March 1, 2018, through February 28, 2019.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish a Food Assistance Program (FAP) benefit overissuance to Petitioner totaling \$375.

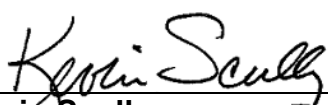
DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED IN PART with respect to the establishment of an overissuance and REVERSED IN PART with respect to the amount of the overissuance.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

The Department is ORDERED to initiate collection procedures for a \$375 overissuance in accordance with Department policy.

KS/hb



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 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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Erin Bancroft
105 W. Tolles Drive
St. Johns, MI 48879

DHHS Department Rep.

MDHHS-Recoupment
235 S Grand Ave
Suite 1011
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Clinton County, DHHS

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
MI [REDACTED]