



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 17, 2019
MOAHR Docket No.: 19-008931
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 (ALJ) 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 September 12, 2019 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Rebecca Smalley, Recoupment Specialist. During the hearing, a 59-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-59.

ISSUE

Did Petitioner's request for hearing give rise to a hearable issue over which the undersigned ALJ has jurisdiction?

If so, did Petitioner receive a \$2,658 overissuance of Food Assistance Program (FAP) benefits from December 1, 2014 through November 30, 2015 that the Department is entitled to recoup and/or collect?

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 May 31, 2000, Petitioner was convicted of a drug-related felony in Saginaw County, Michigan. Exhibit A, pp. 26-28.
2. On July 11, 2006, Petitioner was convicted of a drug related felony in Saginaw County, Michigan. Exhibit A, pp. 23-25.

3. On October 14, 2014, the Department issued to Petitioner a Redetermination form to gather relevant information regarding Petitioner's ongoing eligibility for benefits. Petitioner returned the completed Redetermination to the Department on October 30, 2014. Exhibit A, pp. 10-15.
4. On the completed Redetermination form submitted to the Department, Petitioner acknowledged that she had two or more drug-related felonies. Exhibit A, p. 14.
5. Despite disclosing that she had two or more drug-related felonies to the Department, the Department erroneously approved Petitioner for FAP benefits and provided her group with monthly FAP benefits from December 1, 2014 through November 30, 2015. Exhibit A, pp. 29-46.
6. On November 3, 2015, Petitioner was convicted of a drug-related felony in Saginaw County, Michigan. Exhibit A, pp. 19-22.
7. From December 1, 2014 through November 30, 2015, Respondent's FAP group received \$2,820 in FAP benefits. Exhibit A, pp. 29-46.
8. In April 2018, the Department's Office of Inspector General (OIG) ran a data mining program that flagged Petitioner's case as having two drug-related felonies and receiving FAP benefits. The OIG investigated the matter and determined that Petitioner did not commit an Intentional Program Violation as she disclosed her felonies on the 2014 Redetermination. Exhibit A, pp. 6-9.
9. On April 10, 2019, the matter was referred to a Recoupment Specialist.
10. On April 11, 2019, the Recoupment Specialist issued a Notice of Overissuance to Petitioner informing Petitioner that the Department determined Petitioner received a \$2,658 agency error overissuance of FAP benefits from December 1, 2014 through November 30, 2015. Exhibit A, pp. 48-52.
11. The April 11, 2019 Notice of Overissuance was addressed to Petitioner at [REDACTED], [REDACTED], Michigan 48601. During the hearing, the Department representative confirmed that Petitioner had never had that address on record with the Department. Petitioner testified that she did not live there. Petitioner credibly testified that she did not receive the notice sent to an address that she never provided to the Department.¹
12. Later in April 2019, Petitioner submitted to the Department an application for other benefits. When doing so, Petitioner provided to the Department a different mailing address. Exhibit A, p. 59.

¹ Presumably, the address was taken from the court documents relating to Petitioner's 2015 conviction, which have that address.

13. On July 17, 2019, the Department issued to Petitioner a Treasury Offset Program Notice informing Petitioner that she was liable for a \$2,658 debt to the Department and the means in which that debt would be collected. Exhibit A, pp. 53-55.
14. On [REDACTED], 2019, the Department received a handwritten document from Petitioner stating, in relevant part, "[t]his letter is intended as a formal request for a hearing or review in regards to a treasury offset program notice." Exhibit A, pp. 56-57.
15. On July 25, 2019, the Department issued to Petitioner correspondence indicating that it reviewed the matter and determined that the debt was past due and legally enforceable. Exhibit A, p. 58.
16. On [REDACTED] 2019, Petitioner submitted to the Department another handwritten request for hearing objecting to the Department's efforts to establish an overissuance of FAP benefits.

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 is seeking to establish an alleged \$2,658 overissuance of FAP benefits issued to Petitioner from December 1, 2014 through November 30, 2015. The Department alleges that the overissuance was caused by the Department's error in failing to remove Petitioner from the FAP group as a disqualified member due to her two felony drug convictions, which were reported to the Department in October 2014. The Department designated the overissuance an agency error overissuance. In calculating the amount of the alleged overissuance, the Department factored in income for the household to calculate the benefits Petitioner's group, excluding Petitioner, should have received during the alleged overissuance period. The Department now seeks to recoup and/or collect from Petitioner the difference between what Petitioner's group received and what the Department believes Petitioner's group should have received.

In furtherance of that objective, the Department issued a Notice of Overissuance on April 11, 2019 to an address on [REDACTED] in [REDACTED] Michigan. Petitioner did not receive that document as she did not live at that address, and the Department

representative at the hearing acknowledged that Petitioner never used that address in her many years of dealing with the Department. In July 2019, Petitioner received a notification indicating that she was found to owe the Department \$2,658. Petitioner immediately mailed a hearing request objecting to the alleged debt. The following month, Petitioner submitted another hearing request to the Department objecting to the alleged debt.

The first issue to address is whether Petitioner's hearing request gave rise to a hearable issue over which the undersigned ALJ has jurisdiction to address. Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to take into account the recipient's choice of service.

A client's request for hearing must be in writing and signed by an adult member of the eligible group, adult child, or authorized hearing representative (AHR). Bridges Administrative Manual (BAM) 600 (October 2018), p. 2. Moreover, BAM 600, p. 6 provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action.

In this case, the Notice of Overissuance was issued on April 11, 2019, and Petitioner's first hearing request was received by the Department on [REDACTED], 2019, which was beyond the 90-day time limit. Ordinarily, this would result in the dismissal of the hearing request for lack of jurisdiction due to the absence of a timely hearing request. However, this case is not ordinary in that the address to which the Notice of Overissuance was sent was not Petitioner's address of record. During the hearing, Petitioner denied having received the Notice of Overissuance as she did not live at the address, and the Department acknowledged that the address to which it was sent was never Petitioner's address of record with the Department. Petitioner credibly testified that she only became aware of the alleged overissuance upon receiving a July 17, 2019 Treasury Offset Program Notice that was sent to her correct address. As Petitioner promptly responded to that letter via a [REDACTED] 2019 hearing request and again via an [REDACTED], 2019 hearing request, it is found that Petitioner timely requested a hearing upon being provided with notice of the Department's action. Accordingly, the substantive issue with respect to the alleged overissuance will be addressed.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (May 2014), p. 1. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to

receive. BAM 700, p. 1. A client error overissuance occurs when the client receives more benefits than he or she was entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 6. For a client error overissuance, the overissuance period begins the first month benefit issuance exceeds the amount allowed by policy or 72 months before the date it was referred to the recoupment specialist, whichever is later. BAM 715 (July 2014), pp. 4-5. An agency error overissuance is caused by incorrect action (including delayed or no action) by the Department. BAM 705 (July 2014), p. 1. For an agency error overissuance, the overissuance period begins 12 months before the date the overissuance was referred to the recoupment specialist. 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. 4; BAM 715, p. 6.

In this case, Petitioner received a total of \$2,820 in FAP benefits for the time period of December 1, 2014 through November 30, 2015. The Department contends that Petitioner's FAP group was only entitled to receive \$162 during that time period.

The Department is correct that Petitioner should have been disqualified from receiving FAP benefits during the entire time period. An individual who has been convicted of two or more felony drug offenses which occurred after August 22, 1996, is permanently disqualified from receiving FAP benefits. BEM 203 (July 2014), p. 2; 7 CFR 273.1(b)(7)(vii). As Petitioner was permanently disqualified from receiving FAP benefits for all times relevant to this matter and benefits were issued to Petitioner's group without excluding Petitioner, Petitioner received more FAP benefits than she was entitled. The reason that Petitioner received those benefits was on account of the Department's error in processing her 2014 Redetermination. That conclusion, however, does not end the inquiry into whether the Department can establish a valid overissuance against Petitioner.

This case concerns benefits issued from December 2014 through November 2015 on account of an agency error. The Department did not discover any problems with Petitioner's FAP benefits case until the Office of Inspector General (OIG) ran a data mining project in April 2018, which flagged Petitioner's case due to her having two felony drug convictions. Exhibit A, pp. 6-9. During the hearing, Ms. Smalley, the Recoupment Specialist, indicated that the matter was not referred to her until April 10, 2019.

"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 [Recoupment Specialist], whichever 12 month period is later." BAM 705, p. 5.² "The overissuance period ends the month (or pay period for CDC) before the benefit is corrected." BAM 705, p. 5.

² It should be noted that the example given in policy to demonstrate how the overissuance period is calculated states "An agency error was referred to the [Recoupment Specialist] in May 2014 for the period of March 2011 through June 2012. The begin date would be July 2011. The period would be July 2011 through June 2012 since this is the latest 12-month period." BAM 705, p. 5. This example is clearly not

Pursuant to the clear and unambiguous language of the operative policy, the overissuance period in this case cannot reach back to benefits Petitioner received in 2014 and 2015. The Department had no idea about the alleged overissuance until April 2018 and referred the matter to the Recoupment Specialist on April 10, 2019. Thus, even if we use the April 2018 date as the relevant date to determine the overissuance begin date, it still results in the overissuance period beginning in May 2017, at the earliest. A true application of the clear policy would result in an overissuance period beginning May 2018.

As all benefits at issue in this case were issued well before the earliest possible overissuance begin date, the Department's efforts to establish a claim with respect to those benefits is in violation of Department policy. The Department may only establish claims concerning overissuances occurring within a valid overissuance period. The Department's efforts in this case to establish a claim over the alleged overissuance of benefits issued years before a valid agency error overissuance period cannot stand.

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 did not act in accordance with Department policy when it attempted to establish an agency error overissuance of FAP benefits received by Petitioner from December 1, 2014 through November 30, 2015.

DECISION AND ORDER

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

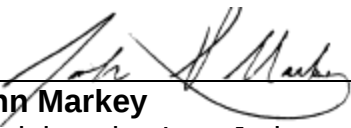
THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

in compliance with the actual rule given that the rule states that the overissuance period begins twelve months before the date the overissuance was referred to the Recoupment Specialist if that date is later than the date that benefits first exceeded the amount allowed. In the example, the unambiguous language of the rule dictates that the overissuance period should begin June 2013, at the earliest, given that it was "referred to the [Recoupment Specialist] in May 2014."

1. Delete the alleged overissuance from Petitioner's case.

IT IS FURTHER ORDERED that the Department is prohibited from seeking to establish an overissuance with respect to Petitioner's FAP benefits issued from December 1, 2014 through November 30, 2015.

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

Via Email:

MDHHS-Saginaw-Hearings
MDHHS-Recoupment
M. Holden
D. Sweeney
BSC2- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]