



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], MI [REDACTED]

Date Mailed: October 10, 2019
MOAHR Docket No.: 19-009654
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 3-way telephone hearing was held on October 2, 2019, from Lansing, Michigan. Petitioner personally appeared and testified unrepresented.

The Department of Health and Human Services (Department or Respondent) was represented by Ms. Ramos, Recoupment Specialist. Amber Gibson, Hearings Facilitator appeared as a witness.

Department Exhibit A.42 was offered and admitted into the record.

ISSUE

Did the Department properly determine that Petitioner was overissued Food Assistance Program (FAP) benefits due to client error?

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 August 9, 2019, Respondent issued a Notice of Overissuance to Petitioner in the amount of \$2,070.00 during the period of July 1, 2014 to January 31, 2015, due to client error.
2. On September 3, 2019, Petitioner filed a hearing request.

3. During the time period at issue, Petitioner was a SR. Petitioner informed her worker of income changes which the worker failed to adjust on Petitioner's FAP budget.
4. Petitioner was overissued FAP benefits in the amount of \$2070.00 during the period of July 1, 2014 to January 31, 2015, due to agency error.

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 federal regulations regarding simplified reporting is found at 7 CFR 273.12; overissuance federal regulations are found at 7 CFR 273.18. Corresponding state policy is found primarily at BAM 200 and 705 and 715.

Here, unrefuted evidence of record indicates that Petitioner had income during the overissuance period above the amount her group was required to report at the semi-annual review. For Petitioner that amount was any income over \$2,552.00.

Petitioner does not dispute the income. The Department argues that Petitioner failed to report increased income; Petitioner argued that she informed her worker. Petitioner was a credible witness. The individual at the administrative hearing did not have personal knowledge of this case. The worker who has personal knowledge of this case was not at the administrative hearing and not available for examination and cross-examination. As such, Petitioner must prevail on the issue as to whether the error was agency or client error. The Department classified the error as client error. The undersigned reverses that determination and finds that the evidence of record supports finding that the error here was agency error.

However, the Department pointed out that federal and state law requires the Department to collect overissuance whether caused by agency or client error, with certain exceptions not applicable to the case herein.

Here the Department submitted budgets recalculating the FAP benefit amount showing that the correct amount less the amount received resulted in an overissuance of \$2,070.00. Petitioner does not dispute the calculation(s) or the time period.

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 calculated the FAP overissuance in the amount of \$2,070.00 for the time period at issue herein. However, based on the evidence of record, the evidence supports finding that the error here shall be reclassified as agency error. However, such reclassification will not change the requirement for the Department to recoup the overissuance.

In addition, the parties and it shall be ordered by the undersigned that Petitioner be allowed to make a repayment arrangement with the Department in the amount of \$30.00 per month.

DECISION AND ORDER

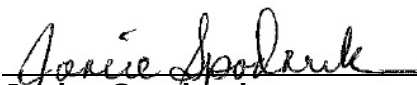
Accordingly, the Department's decision is **AFFIRMED IN PART** regarding the determination that Petitioner is responsible for the \$2,070.00 FAP overissuance for the period of July 1, 2014 to January 31, 2015, and **REVERSED IN PART** with respect to classification of the overissuance.

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:

1. The Department is to initiate reclassifying the FAP overissuance error here as an agency error for the time period of July 1, 2014 to January 31, 2015, and
2. The Department is to initiate setting up a repayment agreement in the amount of \$30.00 per month on the overissuance amount of \$2,070.00, less any payments already paid and/or credited on behalf of Petitioner.

IT IS SO ORDERED.

JS/hb



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 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

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

DHHS Department Rep.

MDHHS-Recoupment
235 S Grand Ave
Suite 1011
Lansing, MI 48909

Ingham County, DHHS

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]