



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: October 22, 2019
MOAHR Docket No.: 19-010185
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 October 16, 2019, from Lansing, Michigan. Petitioner represented himself and his wife, [REDACTED] testified on his behalf and translated for Petitioner. The Department of Health and Human Services was represented by Minnie Igbonu, Recoupment Specialist.

ISSUE

Did the Department of Health and Human Services (Department) the Food Assistance Program (FAP)?

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 November 1, 2018, the Department sent Petitioner a Notice of Overissuance (DHS-4358-A) instructing him that a \$2,817 overissuance of Food Assistance Program (FAP) benefits would be recouped and a Hearing Request for Overissuance or Recoupment Action (DHS-4358-D). Exhibit A, pp 4-8.
2. On November 13, 2018, the Department received Petitioner's hearing request protesting the recoupment of Food Assistance Program (FAP) benefits. MAHS Docket No. 18-011701.
3. On December 12, 2018, the Michigan Office of Administrative Hearing System (MOAHR) held a hearing concerning the recoupment of Food Assistance Program (FAP) benefits. MAHS Docket No. 18-011701.

4. On December 17, 2018, the Michigan Office of Administrative Hearing System issued a hearing decision and ordered the Department to redetermine the amount of the overissuance of Food Assistance Program (FAP) benefits. MAHS Docket No 18-011701.
5. On December 19, 2018, the Department certified that the December 17, 2018, order had been completed. Exhibit A, p 21.
6. On December 19, 2018, the Department sent Petitioner another Notice of Overissuance (DHS-4358-A) instructing him that a \$2,817 overissuance of Food Assistance Program (FAP) benefits would be recouped. Exhibit A, pp 15-20.
7. On September 16, 2019, the Department received Petitioner's Request for a Hearing (DHS-18) protesting the decreasing amount of food assistance. Exhibit A, p 56.

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.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.

- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2019), pp 3-4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2019), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

On December 19, 2018, the Department sent Petitioner a Notice of Overissuance and a Hearing Request for Overissuance or Recoupment Action, which were addressed to his current mailing address of record. No evidence was presented on the record that Petitioner returned the request for hearing or otherwise requested a hearing protesting the recoupment of FAP benefits within 90 days of the notices being sent to him. No evidence was presented on the record that Petitioner requested a rehearing or reconsideration of the December 17, 2018, hearing decision.

Petitioner is not entitled to a hearing protesting the establishment of a FAP overissuance, and the debt listed on the December 19, 2018, Notice of Overissuance has been established.

On September 30, 2019, the Department received another request for a hearing, this time using the Request for a Hearing (DHS-18) form. Petitioner's hearing request clearly indicates that he is protesting a reduction of FAP benefits. While this reduction of FAP benefits may be related to recoupment of the established debt, Petitioner is entitled to a hearing protesting his current level of benefits.

This Administrative Law Judge finds that the hearing record supports a finding that a debt caused by an overissuance of FAP benefits has been established and that Petitioner's September 30, 2019, request for a hearing is not a timely request to protesting the amount of that debt.

However, Petitioner's September 30, 2019, hearing request is timely with respect to the determination of his current level of FAP benefits and the collection of that overissuance from his active FAP benefits. This issue raised on Petitioner's request for a hearing was not addressed in the Department's hearing summary.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it reduced Petitioner's monthly allotment of Food Assistance Program (FAP) benefits.

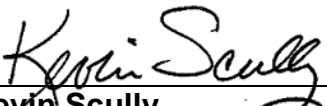
DECISION AND ORDER

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:

Initiate a determination of Petitioner's eligibility for the Food Assistance Program (FAP) effective October 1, 2019, and provide Petitioner with written notice describing the Department's revised eligibility determination.

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 Department Rep.

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

DHHS

Sharnita Grant
25637 Ecorse Rd.
Taylor, MI 48180

Wayne County (District 18), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Policy-Recoupment via electronic mail

MDHHS-OIG via electronic mail

Petitioner

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