



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: May 18, 2020
MOAHR Docket No.: 19-010365
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on May 14, 2020, from Clawson, Michigan. The Department was represented by Jennifer Walker, Assistant Attorney General (AAG). The Department called Chad Essebaggers, Regulation Agent of the Office of Inspector General (OIG) and LaCre Barnett, Recoupment Specialist as witnesses.

Petitioner, [REDACTED] did not appear. This matter having been initiated by the Department with the filing of a hearing summary and due notice having been provided to Petitioner, the hearing was held in Petitioner's absence in accordance with Department of Health and Human Services Bridges Administrative Manual (BAM) 725 (October 2017), pp. 17.

ISSUE

Did Petitioner receive an over-issuance (OI) of Food Assistance (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. Petitioner was a recipient of FAP benefits from the Department for the period February 2015 through August 31, 2018.
2. The Department alleges Petitioner received a \$18,617.00 OI during the period February 1, 2015, through August 31, 2018, due to Petitioner [REDACTED] error.

3. Petitioner lived with and listed [REDACTED] [REDACTED] as an adult household member on her applications and redeterminations. [REDACTED] as a household member had earned income from self employment which income was not reported by Petitioner at any time to the Department during the period of February 2015 through August 31, 2018.
4. Petitioner also received income from [REDACTED] to support the household, but this income was not reported to the Department.
5. [REDACTED] monthly income from self employment was not reported by Petitioner to the Department and caused the household to be ineligible for FAP benefits or in some instances, entitled to reduced FAP benefits for the OI period in question. Exhibit A, pp. 95-96 and See Overissuance budgets, Exhibit A, pp. 25-94.
6. On September 6, 2019 Petitioner was sent a Notice of Overissuance advising Petitioner of the amount of the OI stating that she had been overissued \$18,617 for the OI period. Exhibit A, pp 4-6.
7. On September 17, 2019, Petitioner submitted a request for hearing disputing the Department's actions. Exhibit A, p. 3.
8. The Department alleges that Petitioner received an \$18,617.00 OI that is still due and owing to the Department.

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), and Department of Health and Human Services Reference Tables Manual (RFT).

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 to .3015.

In this case, Petitioner's live together partner [REDACTED] was continuously self employed during the period of the overissuance alleged in this matter and was listed as a household member on Petitioner's applications and redeterminations, but no income was reported at any time by Petitioner for the household. Exhibit A, pp.273-276.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2018), p. 1. A client error occurs when the client received more benefits than they were entitled to because the

client gave incorrect or incomplete information to the Department. BAM 700, p. 6. An agency error is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 4. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705 (October 2018), p. 6. If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source when determining the correct benefit amount. BAM 705, p. 8. For client error overissuances due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 720 (October 2017), p. 10.

The Department called OIG Regulation Agent Chad Essebaggers as a witness. Mr. Essebaggers was assigned to investigate the matter after he received a referral from the Department and conducted a front-end eligibility investigation. Essebaggers testified that he subpoenaed documents as part of his investigation, including tax returns and bank accounts that demonstrated that [REDACTED] had monthly self employment income which was never reported by Petitioner. The self employment income was compiled by him from [REDACTED] bank account information. Exhibit A, pp 95-96, See also bank accounts for [REDACTED] and [REDACTED], pp. 101-171 ([REDACTED] and pp. 172-266 [REDACTED]). The bank accounts were never reported to the Department by Petitioner. Essebaggers further testified that he contacted [REDACTED] the company that [REDACTED] provided driver's to, to deliver products. [REDACTED] confirmed that [REDACTED] had a contract with [REDACTED] as a master contractor, was self employed and was paid for his services. Essebaggers further testified that he reviewed numerous documents in the Petitioner's Bridges case file which included 6 documents where Petitioner advised the Department that she had no income when applying for FAP benefits or completing redeterminations. He testified based upon his review that as early as December 2014, in an application she completed for FAP benefits, Petitioner was informed that she was required to report income and changes in household income that could affect the FAP benefit amount she received. Essebaggers also obtained bank records for both Sharif and Petitioner, which he provided to the recoupment specialist Ms. Barnett. Mr. Essebaggers also testified that he referred the matter to the Kent County Prosecutor for prosecution and the matter is currently pending and charges for welfare fraud have been filed against Petitioner.

In support of its request for recoupment and that Petitioner was overissued FAP benefits, the Department presented Ms. LaCre Barnett who was assigned to prepare the recoupment matter. Ms. Barnett testified that based upon the self employment income determined by Mr. Essebaggers for [REDACTED], and the financial records she received, including bank accounts, she completed FAP overissuance budgets for each of the months in the OI period of February 2015 through August 31, 2018. Exhibit A, 25-94. Ms. Barnett calculated the benefits Petitioner should have received each month during the overissuance period based on the addition of [REDACTED] unreported self employment income. She testified that she also examined the applications and redeterminations filed by Petitioner and did not find any instance where income for the household was reported starting with a [REDACTED] 2014 FAP application. She

testified that this application clearly informed Petitioner about her reporting responsibilities including reporting changes in income and starting income. She also determined that due to Petitioner's failure to report income at any time, she correctly calculated the OI start date due to the fact that the application failed to disclose income received. Exhibit A, pp. 270-301. Based upon her review of the information Ms. Barnett concluded there was client error demonstrated. She testified that she used [REDACTED] self employment income when determining the OI and she reduced the income by 25% to account for expenses as required by Department policy for determining self-employment income. BEM 502 (July 2017), pp. 3-5.

A review of the budgets was made at the hearing and they were determined to be correct. Exhibit A, pp. 25-94. In support of the overissuance alleged the Department provided evidence of FAP benefits issued by the Department to Petitioner based on the Issuance Summary and Benefit Summary Inquiries to confirm the benefits received by Petitioner during the OI period. Exhibit A, pp. 12-24. Ms. Barnett testified that she only included rent for the overissuance budgets based upon prior verifications found in the Petitioner's case records and not all months included rent as it was not reported by the Petitioner.

The Department presented sufficient evidence to establish that Petitioner had been overissued FAP benefits as a result of client error. Petitioner failed to attend the hearing and present any testimony or evidence to dispute the overissuance amount sought by the Department. As such, the Department established that it was entitled to recoup overissued FAP benefits in the amount of \$18,617.00 for the period of February 2015 through August 31, 2018.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish a FAP benefit OI to Respondent totaling \$18,617.00.

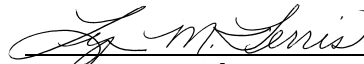
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and the testimony of the witnesses finds that the Department **did** establish a FAP benefit OI to Respondent totaling \$18,617.00.

Accordingly, the Department is **AFFIRMED**.

The Department is ORDERED to initiate collection procedures for a \$18,617.00 OI in accordance with Department policy.

LMF/tlf



Lynn M. Ferris
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-Kent-Hearings
MDHHS-Recoupment-Hearings
AG-HEFS-MAHS – Walker
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

