



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: December 26, 2019
MOAHR Docket No.: 19-011998
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 7 CFR 273.15, and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 19, 2019, from Lansing, Michigan. Petitioner, [REDACTED], appeared and represented herself. Respondent, Department of Health and Human Services (Department), had Darcus Braswell, Recoupment Specialist, appear as its representative. Neither party had any additional witnesses.

Two exhibits were admitted into evidence during the hearing. A 69-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A, and an 11-page packet of documents provided by Petitioner was admitted collectively as Petitioner's Exhibit 1.

ISSUE

Did the Department properly determine that Petitioner owes the Department a debt of \$1,424.00 for Food Assistance Program (FAP) benefits that were overissued to her from January 2017 through August 2017?

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 is a FAP recipient.
2. On April 2, 2017, Petitioner's claim for social security was approved by the Social Security Administration (SSA). The SSA notified Petitioner that she was entitled to benefits effective December 1, 2016. The SSA notified Petitioner that she would receive a lump sum payment of \$4,998.50 for back pay, and then she would receive \$1,538.00 per month (starting in May 2017).

3. The Department received an alert that Petitioner received an increase in income from SSA effective December 1, 2016.
4. The Department reviewed Petitioner's case and determined that she was overissued FAP benefits because she had unreported income.
5. On August 1, 2019, the Department mailed a notice of overissuance to Petitioner to notify her that she was overissued \$1,424.00 in FAP benefits from January 2017 through August 2017.
6. On August 13, 2019, Petitioner requested a hearing to dispute the Department's decision.

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) 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 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, Petitioner received a lump sum payment for back pay from the SSA, and Petitioner did not begin receiving monthly payments until May 2017. Although the Department presented evidence to establish that Petitioner was entitled to an increase in social security effective December 1, 2016, Petitioner did not begin receiving her payments until May 2017.

Petitioner presented sufficient evidence to establish that the Department's actions were not in accordance with its policies and the applicable law. Based on the evidence presented, the Department did not properly determine Petitioner's countable income when it determined that she was overissued FAP benefits, because it counted her increase in income before she received it. Income is not countable until it is received. BEM 500 (July 1, 2017), p. 3. Lump sum payments are not treated as income; they are treated as an asset in the month received. *Id.* at 7. Since Petitioner did not receive an increase in social security payments until May 2017, Petitioner's increase was not countable until May 2017. Thus, the Department should not have determined her increase in income was effective December 1, 2016. When the Department determined that Petitioner's increase in income was effective December 1, 2016, the Department improperly determined that she was overissued FAP benefits.

The Department did not properly establish that Petitioner owes the Department \$1,424.00 for FAP benefits overissued from January 2017 through August 2017. However, the Department may review its overissuance budget, determine its


overissuance in accordance with this decision, and then issue a new notice of overissuance to Petitioner pursuant to 7 CFR 273.18(a)(3)(iii).

DECISION AND ORDER

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 its policies and the applicable law when it determined that Petitioner owes the Department a debt of \$1,424.00 for FAP benefits that were overissued to her from January 2017 through August 2017.

IT IS ORDERED that the Department's decision is **REVERSED**. The Department shall begin to implement this decision within ten days.

JK/ml



Jeffrey Kemm
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

