



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: December 23, 2019
MOAHR Docket No.: 19-012431
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 hearing was held on December 18, 2019, from Lansing, Michigan. Petitioner appeared unrepresented. The Jackson County Department of Health and Human Services (Department) initially appeared with two representatives who left the room unannounced as soon as the hearing began with a recoupment specialist who appeared by a 3-way conference call, Jody Anderson.

ISSUE

Did the Department properly determine that Petitioner was overissued Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

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, 2019, the Department issued a Notice of Overissuance to Petitioner due to Agency error for FAP benefit for the months of July through October 2019 in the amount of \$689.00. Exhibit A, pgs. 12-17.
2. On November 12, 2019, Petitioner filed a hearing request.
3. Prior to January 2019 Petitioner was a FAP recipient semi-annual reporter.
4. On [REDACTED], Petitioner returned a DHS-1046 by the due date reporting that her daughter began working.

5. On February 8, 2019, the Department issued three verification requests with a due date of February 19, 2019. Petitioner received them on February 20, 2019. Petitioner went out in a snowstorm and delivered the verifications on February 27, 2019. On the top sheet Petitioner indicated that her daughter was no longer working.
6. From February through June 2019 Petitioner did not receive any FAP benefits.
7. On September 27, 2019, the Department reprocessed Petitioner's case and issued FAP benefits for July through October 2019.
8. On October 4, 2019, Petitioner personally appeared at the Jackson County DHHS office and was informed that she was eligible for the 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.

Applicable policy and procedure to the case herein is found at numerous manual items found in BAM and BEM. Corresponding federal regulations are found at 7 CFR 273.18.

In this case, the evidence presented was extraordinarily confusing. First, the Recoupment Specialist who presented the case was "handed the 75-page file" just minute before the hearing was scheduled to begin. The Recoupment Specialist did not have personal knowledge of the case, did not have a chance to review the file, and did not have a chance to discuss the file with the Recoupment Specialist who did prepare the file. In addition, the two individuals from the county office who evidentially were present at the beginning of the hearing, left the hearing room unannounced to the ALJ or the Recoupment Specialist as soon as the hearing began. With or without personal knowledge, they were not available for questions or BRIDGES access. The Recoupment Specialist, as noted, appeared by conference telephone from a remote site.

Here the Department argues that Petitioner was not eligible on the grounds that she failed to accompany her 6-month review report with employment verifications. When questioned about FAP budgets and whether Petitioner was income ineligible, the

Department argued at the hearing that FAP budgets were not relevant as Petitioner should never have received any benefits even if eligible on the grounds that the overissuance was a result of Petitioner's failure to verify. Here the Department representative at the administrative hearing did not testify about or present any FAP budgets, and no calculation(s) of Petitioner being over the income limit for FAP benefits.

Petitioner responded by arguing that she did not receive verification of employment forms until February 20, 2019, in the mail, with a due date of February 19, 2019. Petitioner was very credible in her specificity regarding the return of the verifications in a snowstorm and writing her case number on every single sheet on February 27, 2019, at the local office. In fact, the Recoupment Specialist at the hearing verified that they were entered in the system on February 27, 2019. Petitioner also reported at that time that her daughter was no longer working.

In addition, Petitioner credibly testified that on October 4, 2019, she was informed in person at the Jackson County DHHS Office that she was in fact eligible for FAP and that her back issuance was correct from June through October 2019.

Under 7 CFR 273.18, the Department is required to do a calculation when making a claim against a household. Here none was evidentially done and based on the testimony of the Recoupment Specialist, the Department recoupment action was based on failure to verify and not a calculated overissuance. As Petitioner was a credible witness, as the workers from Jackson County DHHS Office left the hearing room, and due to the presenter not having prepared the packet or had an opportunity to speak with Petitioner's worker(s) and with the Recoupment Specialist it cannot be said that the evidence of record is credible and accurate. It is also reasonable that the Department may very well have made a calculated determination at some point which showed eligibility based on the representation of the worker at the Jackson County DHHS Office on October 4, 2019, who informed Petitioner that she was indeed eligible.

For these reasons and for the reasons stated on the record, the recoupment action is not supported by credible evidence and the Department did not act in accordance with policy and federal regulations. 7 CFR 216.18.

DECISION AND ORDER

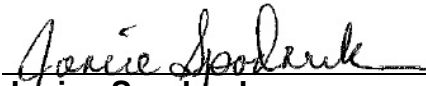
Accordingly, the Department's decision is **REVERSED**.

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:

Remove the recoupment action for the months of June through October 2019 from the Bridges system.

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

Denise Croff
301 E. Louis Glick Hwy.
Jackson, MI 49201

DHHS Department Rep.

MDHHS-Recoupment
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Jackson County,

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

MDHHS-OIG via electronic mail

Petitioner

[REDACTED]
[REDACTED], MI [REDACTED]