



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: February 3, 2020
MOAHR Docket No.: 19-013545
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 January 29, 2020, from Lansing, Michigan. Petitioner, [REDACTED], appeared and represented herself. Respondent, Department of Health and Human Services (Department), had LaCre Barnett, Recoupment Specialist, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 41-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly determine that Petitioner owes the Department a debt of \$288.00 for Food Assistance Program (FAP) benefits that were overissued to her from December 2017 through March 2018?

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 benefits recipient.
2. The Department investigated Petitioner's case and determined that Petitioner was overissued FAP benefits. The Department determined that Petitioner had an increase in earnings that she did not report to the Department, and the increase reduced the FAP benefit that she was eligible for. The Department determined that the total amount of the overissuance was \$288.00 for FAP benefits issued from December 2017 through March 2018.

3. On October 24, 2019, the Department mailed a notice of overissuance to Petitioner to notify Petitioner that she received an overissuance of \$288.00 in FAP benefits issued from December 2017 through March 2018.
4. On December 30, 2019, Petitioner requested a hearing to dispute the notice of overissuance.

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.

When a client receives more benefits than she was entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 1, 2018), p. 1. The overissuance amount is the amount of benefits in excess of the amount the client was eligible to receive. *Id.* at 2. In this case, Petitioner disputed that she received an overissuance, and the Department was unable to present sufficient evidence to establish that Petitioner did receive an overissuance.

The Department alleged that Petitioner had earnings that were not budgeted because they were not reported, and the Department alleged that those unreported earnings made Petitioner ineligible for the full FAP benefit she received. Thus, the Department alleged Petitioner was overissued FAP benefits. The Department did not present sufficient evidence to support its allegation. The Department presented budgets that supposedly showed Petitioner was overissued FAP benefits, but the Department's only witness was unable to explain the budgets. For example, the December 2017 budget indicated that Petitioner had budgetable income of \$ [REDACTED], but the budget indicated that only \$ [REDACTED] was actually budgeted. The Department was unable to explain why the two numbers varied.

Further, the Department's budgets did not include an earned income deduction for any of Petitioner's reported income, even though Petitioner had previously reported her income to the Department (the only unreported income was an increase in income). The Department explained that Petitioner was ineligible for any earned income deduction because her increase in income was not reported. The Department's position is not supported by policy or law. The Department was required to give Petitioner an earned income deduction for the amount of income that she had previously reported to the Department. This is supported by the definition of overissuance in the Department's policy, which states that an overissuance "is the amount of benefits issued to the client

group ... in excess of what it was eligible to receive....” BAM 700 (October 1, 2018), p. 1. This is also supported by the Federal instructions on how to calculate a claim, which state “do not apply the earned income deduction to that part of any earned income that the household failed to report” 7 CFR 273.18(c)(1). Thus, pursuant to the Federal instructions, a FAP recipient only loses the benefit of the earned income deduction on the portion of income that was not reported. The Department’s failure to give Petitioner the deduction she was entitled to resulted in the Department overstating her income in the budget.

In summary, the Department did not establish that Petitioner was overissued FAP benefits. Therefore, the Department’s notice of overissuance must be reversed.

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 \$288.00 for Food Assistance Program (FAP) benefits that were overissued to her from December 2017 through March 2018.

IT IS ORDERED that the Department’s decision is **REVERSED**. The Department shall begin to implement this decision within 10 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

DHHS

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent (District 1) County DHHS – Via
Electronic Mail

OIG – Via Electronic Mail

MDHHS Recoupment – Via Electronic
Mail

L. Bengel – Via Electronic Mail

Petitioner

– Via First Class Mail
MI