



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 5, 2019
MAHS Docket No.: 19-001821
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 telephone hearing was held on March 27, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED] Recoupment Specialist, and Valarie Foley, Hearings Facilitator. During the hearing, a 102-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-102.

ISSUE

Did the Department properly establish that Petitioner received a client error overissuance of Food Assistance Program (FAP) benefits from October 1, 2014, through March 31, 2015?

Did the Department properly establish that Petitioner received an agency error overissuance of Food Assistance Program (FAP) benefits from April 1, 2015, through June 30, 2015?

Did the Department properly establish that Petitioner received an agency error overissuance of Food Assistance Program (FAP) benefits from February 1, 2017, through March 31, 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. During all times relevant to this matter, Petitioner was an ongoing recipient of FAP benefits from the Department.

2. In the fall of 2014, Petitioner began working for [REDACTED]. Petitioner did not timely report the employment to the Department. Exhibit A, pp. 16-17.
3. On January 13, 2015, the Department issued to Petitioner a Redetermination form to gather relevant information regarding Petitioner's ongoing eligibility for FAP benefits. On [REDACTED] 2015, Petitioner returned to the Department the completed Redetermination form. Petitioner was asked on the form whether anyone in his household had income. Despite being employed and receiving income at the time, Petitioner dishonestly checked the "No" box. Petitioner signed the Redetermination thereby certifying that all information was true. Exhibit A, pp. 6-12.
4. The Department received a wage match notification that Petitioner was working. On March 6, 2015, the Department issued to Petitioner a New Hire Client Notice requesting information related to the Department's belief that Petitioner was working for [REDACTED]. Petitioner returned the completed form to the Department on [REDACTED], 2015. On the form, Petitioner stated that he started the job with [REDACTED] on March 4, 2015. Exhibit A, pp. 12-13.
5. Petitioner did not report his income with [REDACTED] to the Department until March 16, 2015. Thus, even though Department was working and receiving income at the time, the Department was issuing him FAP benefits based on no income. Exhibit A, pp. 22-72.
6. Despite Petitioner's March 16, 2015 report of employment and income, the Department failed to budget any income for Petitioner when calculating his April, May, and June 2015 FAP benefits. Exhibit A, pp. 22-72.
7. At some point, Petitioner stopped working for [REDACTED].
8. In December 2016, Petitioner reported to the Department that he had returned to work for AM. Exhibit A, pp. 73-79.
9. Despite the reported return to work, the Department did not update Petitioner's FAP budget to include the income when calculating Petitioner's FAP benefits for February and March 2017.
10. On April 17, 2017, the matter was referred to a recoupment specialist to determine whether there was an overissuance of FAP benefits to Petitioner.
11. On February 14, 2019, the Department issued to Petitioner three separate Notices of Overissuance. The documents alleged that Petitioner received a \$1,068 client error FAP overissuance from October 1, 2014, through March 31, 2015; a \$582 agency error overissuance from April 1, 2015, through June 30, 2015; and a \$682 agency error overissuance from February 1, 2017, through March 31, 2017.
12. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions.

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.

In this case, Petitioner has objected to the Department's attempt to establish an overissuance of FAP benefits received by Petitioner. The Department asserts that Petitioner received an overissuance of FAP benefits from October 1, 2014, through March 31, 2015, on account of Petitioner's failure to report an increase in household income. In addition to the alleged client error overissuance, the Department asserts that a Department error in processing Petitioner case resulted in Petitioner receiving overissuances of FAP benefits from April 1, 2015, through June 30, 2015, and again from February 1, 2017, through March 31, 2017. In total, the Department asserts that Petitioner received an overissuance of FAP benefits of \$2,332.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 2018), p. 1. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, p. 1.

During the hearing, the recoupment specialist, Ms. Beard, testified that she received the overissuance referral for Petitioner's case on April 17, 2017. Upon looking into Petitioner's benefits history, Ms. Beard determined that there were three time periods that Petitioner received an overissuance of FAP benefits. The period from October 1, 2014, through March 31, 2015, was designated a client error on account of Petitioner's failure to report a change in income. The periods from April 1, 2015, through June 30, 2015, and February 1, 2017, through March 31, 2017, were designated as agency errors that resulted from the Department's failure to implement a reported change.

CLIENT ERROR OVERISSUANCE

A client error overissuance 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. 7. For client error overissuances, the overissuance period starts the first month benefit issuance exceeds the amount allowed by policy or 72

months before the date it was referred to the recoupment specialist, whichever is later, and ends the month before the benefit is corrected. BAM 715 (October 2017), pp. 5-6.

The Department has presented sufficient evidence to establish that Petitioner received an overissuance of FAP benefits in the amount of \$1,068. Petitioner had an obligation to report changes in his household income to the Department in a timely manner. However, when Petitioner began working for [REDACTED] in the fourth quarter of 2014, Petitioner never reported the change to the Department. Then, in a redetermination submitted to the Department on [REDACTED], 2015, Petitioner dishonestly represented that his household had no income. Thus, this was properly designated as a client error. The time period is within the overissuance period applicable to client error overissuances as it was within 72 months of the referral to the recoupment specialist, which occurred on April 17, 2017.

The Department presented sufficient supporting documentation to substantiate its calculation of the client error overissuance through submission of earnings records and overissuance budgets. Those documents show that by properly factoring Petitioner's actual income, Petitioner received \$1,068 more in FAP benefits than he was entitled to receive from October 1, 2014, through March 31, 2015.

AGENCY ERROR OVERISSUANCE

An agency error overissuance is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 5. For agency error overissuances, the overissuance period starts the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the recoupment specialist, whichever 12 month period is later. BAM 705 (January 2016), pp. 5-6. The overissuance period ends the month before the benefit is corrected. BAM 705, pp. 5-6.

In this case, the overissuance referral was made on April 17, 2017. Thus, for the purposes of an agency error overissuance, the overissuance period starts, at the earliest, in April of 2016. Thus, right off the bat, the alleged agency error overissuance from April 1, 2015, through June 30, 2015, must be invalidated.

However, the Department presented sufficient evidence to establish that Petitioner may have received an overissuance of FAP benefits from February 1, 2017, through March 31, 2017, based on the Department's failure to implement changes properly reported to the Department. The Department calculated Petitioner's monthly FAP amounts during that period without taking into consideration Petitioner's reported income. Thus, it is likely that Petitioner was overissued benefits. However, in calculating the alleged overissuance for that period, the Department did not properly factor in Petitioner's expenses. Petitioner, in 2016, reported that he had monthly housing costs of \$800 and was responsible for utilities, including heating. However, the Department only factored in \$172.50 in housing expenses and failed to apply the heating and utility (h/u) standard. The improper budgeting inevitably caused the Department to miscalculate the benefits

Petitioner was entitled to receive during that time period. Thus, while the Department has established that Petitioner's benefits were calculated without taking into account his income, the Department has failed to show that its revised calculation was correct. Accordingly, the Department must recalculate the alleged overissuance of FAP benefits from February 1, 2017, through March 31, 2017.

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED** in part and **REVERSED** in part.

The Department established that Petitioner received a \$1,068 client error overissuance of FAP benefits from October 1, 2014, through March 31, 2015. The Department is ordered to initiate collection procedures for a \$1,068 client error overissuance, less any amounts already recouped or collected, in accordance with Department policy.

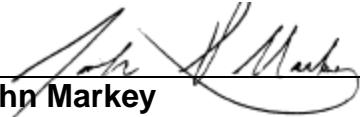
The Department established that Petitioner's FAP benefits from February 1, 2017, through March 31, 2017, were calculated improperly because of the Department's failure to incorporate into the budget the income that Petitioner reported. However, the Department's overissuance budgets failed to properly incorporate Petitioner's reported expenses.

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:

1. Delete the alleged overissuance of FAP benefits from April 1, 2015, through June 30, 2015;
2. Redetermine the amount of FAP benefits Petitioner was entitled to receive from February 1, 2017, through March 31, 2017, properly taking into account Petitioner's income and expenses, including the h/u standard;
3. If there is conflict or uncertainty regarding any relevant issue, such as income or expenses, follow Department policy regarding verifications by allowing Petitioner the opportunity to present information related to the relevant issue in question; and

4. If the recalculation results in a determination that Petitioner was overissued FAP benefits during that time, issue Petitioner a new Notice of Overissuance in accordance with Department policy.

JM/cg



John Markey
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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Recoupment
MDHHS-Wayne-19-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

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