



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]

Date Mailed: July 19, 2019
MOAHR Docket No.: 19-006318
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 July 17, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Tracy Upshaw, Recoupment Specialist. During the hearing, a 33-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-33.

ISSUE

Did the Department properly determine that Petitioner received a client error overissuance of Food Assistance Program (FAP) benefits from June 1, 2018 through August 31, 2018 of \$1,011?

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 [REDACTED], 2018, Petitioner submitted to the Department an application for FAP benefits. On the application, Petitioner indicate that he lived in a household of two. Petitioner informed the Department that he had housing expenses, child support expenses, medical expenses, and dependent care expenses. Petitioner further represented that he had recently lost his job with a company called Signs 365, which he later verified in a timely response to a Department Verification Checklist. Exhibit A, pp. 17-26.

2. Around the same time, Petitioner submitted to the Michigan Unemployment Insurance Agency an application for unemployment compensation benefits (UCB), which were approved. Petitioner received his first UCB check on or about April 28, 2018 and continued to receive weekly allotments of \$362 for the subsequent 20 weeks. Exhibit A, pp. 15-16.
3. Petitioner credibly testified that he informed the Department by telephone of his UCB income.
4. On May 8, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that his application for FAP benefits was approved at a rate of \$352 per month, effective May 1, 2018. The Notice of Case Action provided a table that showed that the Department was factoring in \$437.70 in child support payments when calculating Petitioner's FAP benefits. Petitioner's reported housing expenses were not factored into the equation for some reason. Exhibit A, pp. 29-32.
5. From June 1, 2018 through August 31, 2018, Petitioner received \$352 per month in FAP benefits from the Department. During that period, Petitioner received a total of \$1,056 in FAP benefits. Exhibit A, p. 7.
6. When calculating Petitioner's monthly FAP benefits from June 1, 2018 through August 31, 2018, the Department did not factor in any of the unearned UCB income Petitioner received. Exhibit A, pp. 8-14.
7. After reviewing Petitioner's case, the Department worker involved forwarded the matter to a recoupment specialist via an Overissuance Referral, Form 4701, on April 7, 2019. Exhibit A, p. 33.
8. On June 3, 2019, the recoupment specialist issued to Petitioner a Notice of Overissuance, Forms 4358-A through 4358-D. The Notice informed Petitioner that due to an alleged client error of failing to report the UCB income, the Department overissued Petitioner \$1,011 in FAP benefits from June 1, 2018 through August 31, 2018. Exhibit A, pp. 3-5.
9. In calculating the alleged overissuance, the Department failed to include deductions for dependent care expenses or child support expenses and failed to factor in Petitioner's reported housing costs. Exhibit A, pp. 8-14.
10. On June 10, 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's finding that Petitioner was overissued 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.

In this case, the Department is seeking to recoup an alleged \$1,011 overissuance of FAP benefits issued to Petitioner from June 1, 2018 through August 31, 2018. The Department alleges that the overissuance was caused by Petitioner's error in failing to report his UCB income to the Department. The Department now seeks to recoup and/or collect that amount from Petitioner.

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. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700, p. 1. A client error overissuance occurs when the client receives more benefits than he or she was entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 7. An agency error overissuance is caused by incorrect action (including delayed or no action) by the Department. BAM 705 (January 2016), p. 1. Regardless of whether the overissuance was caused by client error or agency error, the Department must attempt to establish any alleged overissuance over \$250. BAM 700, p. 5; BAM 715 (October 2017), p. 7.

In this case, Petitioner received a total of \$1,056 in FAP benefits for the time period of June 1, 2018 through August 31, 2018. At the time the Department was dispensing the FAP benefits, it was calculating Petitioner's monthly FAP benefits without taking into consideration the \$362 per week Petitioner was receiving in the form of UCB income. This substantial underbudgeting of Petitioner's income resulted in the Department overissuing FAP benefits to Petitioner. Thus, the Department has presented sufficient evidence to establish that there was an overissuance of FAP benefits from June 1, 2018, through August 31, 2018.

However, the Department did not present sufficient evidence to substantiate its calculation of the overissuance amount. During the hearing, the Department provided the monthly overissuance budgets used to determine the amount Petitioner should have received. In each of the monthly budgets, the Department made errors that may have impacted its overall calculation of the overissuance.

Petitioner reported on his application that he had housing expenses. However, those expenses were not factored into any of the overissuance budgets. The same goes for Petitioner's reported child support and dependent care expenses, which had previously been budgeted into Petitioner's FAP benefits calculation but were for some reason

removed from the budget when calculating the alleged overissuance. Based on the evidence presented, the Department failed to include Petitioner's verified and previously utilized expenses when calculating the alleged overissuance. Thus, the Department's decision is reversed with respect to its calculation of alleged overissuance because of its failure to properly include the expenses into the FAP budget, causing Petitioner's alleged overissuance to be overstated.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish a FAP benefit overissuance to Petitioner from June 1, 2018 through August 31, 2018. However, the Department did not present sufficient evidence to determine the amount of that overissuance.

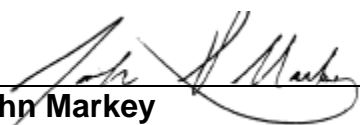
DECISION AND ORDER

Accordingly, the Department is **AFFIRMED** in part and **REVERSED** in part. The Department established that Petitioner received an overissuance of FAP benefits from June 1, 2018 through August 31, 2018. The Department did not, however, establish the amount of the overissuance.

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. Redetermine the amount of the overissuance of FAP benefits to Petitioner from June 1, 2018 through August 31, 2018, using accurate information and appropriately applying Department policy with respect to the budgeting of deductions and expenses;
2. 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
3. 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

