



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: September 12, 2019
MOAHR Docket No.: 19-008477
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on September 5, 2019, from Lansing, Michigan. Petitioner represented himself. The Department of Health and Human Services was represented by Rebecca Smalley.

ISSUE

Did the Department of Health and Human Services (Department) properly determined that Petitioner received an overissuance of Food Assistance Program (FAP) benefits that must be recouped?

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] [REDACTED] 2017, the Department received Petitioner's application for Food Assistance Program (FAP) benefits where he reported being disabled. Exhibit A, pp 64-85.
2. Petitioner was an ongoing Food Assistance Program (FAP) recipient from July 1, 2017, through June 30, 2018. Exhibit A, pp 52-53.
3. On December 18, 2017, the Department received Petitioner's Redetermination (DHS-1010) where he reported receiving social security benefits. Exhibit A, pp 56-63.

4. On June 18, 2018, the Department received Petitioner's Semi-Annual Contact Report (DHS-1046) where he reported that his income had not changed. Exhibit A, pp 54-55.
5. Department records indicate that Petitioner's wife received earned income from employment in each month from July 1, 2017, through June 30, 2018. Exhibit A, p 44.
6. Petitioner received Retirement, Survivors, and Disability Insurance (RSDI) in each month from July 1, 2017, through June 30, 2018. Exhibit A, pp 46-51.
7. On June 24, 2019, the Department sent Petitioner a Notice of Overissuance (DHS-4358-A) instructing him that he had received a \$3,324 overissuance of Food Assistance Program (FAP) benefits. Exhibit A, pp 9-14.
8. On August 1, 2019, the Department sent Petitioner a Notice of Balance Due (DHS-1440-A) instructing him to repay a \$3,324 overissuance of Food Assistance Program (FAP) benefits, or make arrangements to make monthly payments. Exhibit A, pp 7-8.
9. On August 8, 2019, the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits. Exhibit A, p 6.

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.

All earned and unearned income available is countable unless excluded by policy. Earned income means income received from another person or organization or from self-employment for duties for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The

amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. Department of Human Services Bridges Eligibility Manual (BEM) 500 (July 1, 2017).

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

Petitioner applied for FAP benefits on [REDACTED] 2017. Respondent received FAP benefits totaling \$3,507 from July 1, 2017, through June 30, 2018.

Due to Department error, Petitioner's eligibility for FAP benefits was determined only based on his wife's earned income from employment and not his RSDI benefits. The hearing record supports a finding that if the Department had applied Petitioner's RSDI benefits towards his eligibility for FAP benefits, then he would have been eligible for only \$183 of the FAP benefits he received. Therefore, Petitioner received a \$3,324 overissuance of FAP benefits.

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 acted in accordance with Department policy when it determined that Petitioner received an overissuance of Food Assistance Program (FAP) benefits due to Department error that must be recouped.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/hb



Kevin Scully
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

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI 48607

DHHS Department Rep.

MDHHS-Recoupment
235 S Grand Ave
Suite 1011
Lansing, MI 48909

Saginaw County, DHHS

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
[REDACTED], MI [REDACTED]