



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: November 22, 2019
MOAHR Docket No.: 19-011537
Agency No.: ██████████
Petitioner: ██████████

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 November 20, 2019 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Recoupment Specialist, and Tamara Jackson, Hearings Facilitator. During the hearing, an 83-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-83.

ISSUE

Did Petitioner receive a \$1,961 client error overissuance (OI) of Food Assistance Program (FAP) benefits from February 1, 2019 through August 31, 2019 that the Department is entitled to recoup and/or collect?

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 ██████████ 2018, Petitioner submitted to the Department an application for FAP benefits for herself and her minor child. On the application, Petitioner indicated that she had no income. Exhibit A, pp. 74-82.
2. In November 2018, Petitioner contacted the Department and let the Department know that she was working at ██████████. Exhibit A, pp. 37-39.

3. In November 2018, Petitioner contacted the Department and let the Department know that she was working at [REDACTED]. Exhibit A, p. 40.
4. On December 4, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that she was approved for \$293 per month in FAP benefits for her group of two. Relevant to the instant matter, the notice indicated that Petitioner's benefits were calculated in part based on the Department's belief that Petitioner had \$1,136 per month in earned income. Additionally, the notice informed Petitioner that she was a simplified reporter and had to inform the Department within ten days of the end of any month in which her income exceeded \$1,784. Exhibit A, pp. 26-30.
5. Every month from January 2019 through August 2019, Petitioner's monthly earnings exceeded the simplified reporting limit of \$1,784. However, Petitioner never informed the Department of that fact. Exhibit A, pp. 31-36.
6. After reviewing Petitioner's case, the Department worker involved forwarded the matter to a recoupment specialist via an Overissuance Referral, Form 4701, on September 25, 2019. Exhibit A, p. 83.
7. On September 27, 2019, the Department issued to Petitioner a Notice of Overissuance, Forms 4358-A through 4358-D. The Notice of Overissuance informed Petitioner that the Department determined that Petitioner received a \$1,961 client error overissuance of FAP benefits from February 1, 2019 through August 31, 2019. Exhibit A, pp. 7-12.
8. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's efforts to establish an overissuance of FAP benefits received from February 1, 2019 through August 31, 2019.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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 establish an alleged overissuance of FAP benefits issued to Petitioner. The Department alleges that the overissuance was caused by Petitioner's failure to report that his household's income exceeded the simplified reporting limit each month from January 2019 through August 2019. When Petitioner filed her 2019 Redetermination, the Department became aware that Petitioner's household income exceeded the limit and forwarded the matter to a recoupment specialist to determine whether there was an overissuance of FAP benefits. The recoupment specialist factored the previously unbudgeted income into the FAP budgets for every month from February 2019 through August 2019 and determined that Petitioner was overissued \$1,961 in FAP benefits.

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. A client error 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. An agency error is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 5. 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. If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source when determining the correct benefit amount. BAM 705 (January 2016), p. 8. For client error overissuances due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 720 (October 2017), p. 8.

In support of its contention that Petitioner was overissued benefits, the Department presented FAP overissuance budgets for the eight months at issue. The Department calculated the benefits Petitioner should have received each month during the overissuance period based on the actual income as reflected on Petitioner's payroll records. Petitioner verified at the hearing that the income as reflected on those documents was accurate. The Department also presented Petitioner's FAP benefit summary. The benefit summary shows Petitioner was issued FAP benefits in the total amount of \$2,051 during those eight months in question. Based upon the Department's analysis, Petitioner was only entitled to receive FAP benefits totaling \$90 for those eight months combined.

The Department has established that Petitioner received an overissuance of FAP benefits from February 1, 2019 through August 31, 2019. However, that does not end the inquiry. The next issue is whether the Department properly designated this as a client error and calculated the amount.

The Department's conclusion that this was a client error overissuance is premised on the Department's position that Petitioner did not report her employment and income with [REDACTED] until August 2019, despite the fact that she began working there in November 2018. That conclusion, however, is belied by the Department's own records, which show that Petitioner provided to the Department a paycheck stub from [REDACTED] on November 26, 2018. The Department failed to take account of that report and neglected to add that income to her case. Thus, Petitioner did not fail to report that she was working and earning income from [REDACTED]. Rather, the Department failed to process Petitioner's report that she was working and had earnings from [REDACTED]. Had the Department properly processed the report and sought to verify Petitioner's income pursuant to Department policy, Petitioner would not have been a simplified reporter as her income was too high. Thus, any failure to adhere to the simplified reporting requirements ultimately stems for the Department's failure to act upon Petitioner's November 26, 2018 report that she was working at [REDACTED]. Accordingly, this overissuance is most appropriately deemed an agency error overissuance.

As this was an agency error overissuance, the Department was required to apply the 20% earned income deduction when doing the overissuance budgets. The Department failed to do so, causing the overissuance amount to be overstated. The Department must redetermine the amount of the overissuance Petitioner received from February 1, 2019 through August 31, 2019. In doing so, the Department must apply the 20% earned income deduction to all earned income budgeted.

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 Department policy when it determined that Petitioner received a \$1,961 client error overissuance of FAP benefits from February 1, 2019 through August 31, 2019.

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:

1. Apply Department policy regarding agency error overissuances to redetermine the amount of the overissuance of FAP benefits Petitioner received from February 1, 2019 through August 31, 2019;
2. Apply the 20% earned income deduction to all of Petitioner's earned income as she properly reported her jobs to the Department;

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. Issue Petitioner a new Notice of Overissuance in accordance with Department policy.

JM/tm



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 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

Brenda Buhl
1505 Suncrest Drive
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DHHS Department Rep.

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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: FAP: M. Holden; D. Sweeney
AP Specialist Lapeer County (2)