



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: February 12, 2020
MOAHR Docket No.: 19-013608
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, an in-person hearing was held on February 3, 2020 in Warren, Michigan. Petitioner appeared and represented herself. Also appearing on behalf of Petitioner was Petitioner's son, ██████████. The Department of Health and Human Services (Department) was represented by Tracy Upshaw, Recoupment Specialist. Bengali translation services were provided by ██████████, Eligibility Specialist. During the hearing, a 50-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-50.

ISSUE

Did Petitioner receive a \$██████████ client error overissuance of Food Assistance Program (FAP) benefits from October 1, 2015 through March 31, 2016 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. Petitioner was an ongoing recipient of FAP benefits from the Department. Petitioner lived with her husband, ██████████, and two adult children. Petitioner speaks Bengali and has limited to no English proficiency.
2. At all times relevant to the instant matter, ██████████ worked full-time at ██████████ Exhibit A, pp. 31-34.

3. On April 21, 2015, the Department issued to Petitioner a Notice of Case Action informing Petitioner that she was eligible for \$[REDACTED] per month in FAP benefits for a group of three. The benefits were based off the Department's determination that Petitioner's household consisted of three people, Petitioner, [REDACTED], and [REDACTED], Petitioner's son. Petitioner's daughter, [REDACTED] was not listed as a household member. Petitioner was notified that she was a simplified reporter and directed to only report changes if her "HOUSEHOLD INCOME EXCEEDS THE LIMIT LISTED BELOW." The income limit provided just below that statement was \$[REDACTED] Exhibit A, pp. 48-49.
4. Starting in June 2015, [REDACTED] began receiving income from her employment with [REDACTED] [REDACTED] had regular earnings from [REDACTED] from that time through at least sometime in April 2016. During that time period, [REDACTED] worked on average between 25 to 30 hours per week. Exhibit A, pp. 35-36.
5. On September 15, 2015, the Department issued to Petitioner a Redetermination to gather relevant information regarding Petitioner's ongoing eligibility for FAP benefits. Petitioner completed the form and returned it to the Department on October 5, 2015. On the form, Petitioner was directed to report all sources of income and to provide proof of all income her household received. Petitioner only listed her husband [REDACTED] job with [REDACTED]. Exhibit A, pp. 40-45.
6. In October 2015, Shakel began working for [REDACTED] [REDACTED] did not work regularly and average between 12 to 15 hours per week. Exhibit A, pp. 37-38.
7. From October 1, 2015 through March 31, 2016, the Department issued to Petitioner [REDACTED] in FAP benefits without factoring into the equation the income from [REDACTED] or [REDACTED] Exhibit A, pp. 13-30.
8. On April 29, 2016, a Department worker forwarded Petitioner's case to a Recoupment Specialist via an Overissuance Referral, DHS-4701. Exhibit A, p. 50.
9. On September 25, 2019, the Department issued to Petitioner a Notice of Overissuance, DHS-4358-A, along with DHS-4358-B, DHS-4358-C, and DHS-4358-D, informing Petitioner of the alleged overissuance. The Department designated it a client error overissuance and calculated the amount to be \$[REDACTED] Exhibit A, pp. 6-11.
10. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's efforts to establish a [REDACTED] client error overissuance of FAP benefits issued from October 1, 2015 through March 31, 2016.

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 establish an alleged \$ [REDACTED] overissuance of FAP benefits issued to Petitioner from October 1, 2015 through March 31, 2016. The Department alleges that the overissuance was caused by Petitioner's failure to properly report her household's income at various appropriate times, including when [REDACTED] began working, when the total income exceeded the simplified reporting limit starting in July 2019, and on the 2015 Redetermination.

The Department discovered the discrepancy back in April 2016 when it was processing Petitioner's Semi-Annual Review, during which the income of [REDACTED] was disclosed via a database showing earnings. The worker forwarded the matter to a recoupment specialist on **April 29, 2016** to determine whether there was an overissuance of FAP benefits. On **September 25, 2019**, the recoupment specialist added the previously unbudgeted income into the FAP budgets for every month from October 2015 through March 2016 and determined that Petitioner received a client error overissuance of [REDACTED] 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 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 ██████ during those months in question. Based upon the Department's analysis, Petitioner was not entitled to receive any FAP benefits during that time.

The Department has established that Petitioner received an overissuance of FAP benefits from October 1, 2015 through March 31, 2016. 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 failed to report earnings that she was required to report on at least two occasions: (1) when the income of ██████ and ██████ first exceeded the simplified reporting limit in July 2015 and (2) on the Redetermination Petitioner submitted on October 5, 2015.

Without any more information, the Department's designation of this as a client error seems reasonable. After all, Petitioner was told in April 2015 to inform the Department within ten days after the end of any month in which her combined household income exceeded \$2,144, and she failed to report that starting in July 2015, the combined income of her husband and her daughter exceeded that limit. Likewise, on the completed Redetermination, Petitioner was directed to report the income of all household members, and she did not report that ██████ was working despite her receiving regular wages.

However, based on the documents presented during the hearing, it is clear that Petitioner's actions were reasonable and were in compliance with the reporting directives she received. Petitioner has limited to no English proficiency, and the record shows that she made a good faith effort to, and in fact did, comply with the Department's rules. Petitioner had been informed by the Department that her children were considered to be ineligible students and that they were excluded from the FAP group.

During the entire time period, ██████ lived at Petitioner's home, and the same was reported to the Department. On the April 21, 2015 Notice of Case Action, the Department notified Petitioner that her household included only Petitioner, ██████ and ██████. The Notice of Case Action then told Petitioner to report when her "HOUSEHOLD INCOME EXCEEDS THE LIMIT" of \$2,144. As the "household" included only Petitioner, ██████, and ██████, that directive, by its terms, does not have anything to do with ██████a. At no point did the income of those three listed

members of the household exceed the limit. Only when one adds ██████ to the formula did the income exceed that limit. Petitioner cannot be considered to have made an error in failing to report that ██████ income added to the household's income exceeded the limit.

The situation with respect to the October 5, 2015 Redetermination submission is very similar to the simplified reporting situation described above. Petitioner had been told multiple times that her children were not considered part of her household because they were ineligible students. When the Redetermination asked her about the income her "household received," Petitioner reasonably concluded that it was only asking about the income of her household members. The Department had repeatedly informed Petitioner that her children were not members of her household as excluded students. Petitioner's decision to omit ██████ income was perfectly reasonable as she was not a member of Petitioner's household, per the Department's own statements.

Petitioner only provided the information she provided and excluded the information she excluded because of the confusing and conflicting nature of the documents sent by the Department. Add into the equation the fact that Petitioner does not speak English, and one is left with the conclusion that the fault for this situation rests on the Department. 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 potentially be overstated. The Department must redetermine the amount of the overissuance Petitioner received from October 1, 2015 through March 31, 2016. 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 ██████ client error overissuance of FAP benefits from October 1, 2015 through March 31, 2016.

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 October 1, 2015 through March 31, 2016;
2. Apply the 20% earned income deduction to all of the earned income budgeted;
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

Chelsea McCune
27690 Van Dyke
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DHHS Department Rep.

MDHHS-Recoupment
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Suite 1011
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Petitioner

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

cc: FAP: M. Holden; D. Sweeney
AP Specialist Macomb County (4)