



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: March 18, 2020
MOAHR Docket No.: 20-000957
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge (ALJ) 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 12, 2020, from Detroit, Michigan. Petitioner was present with her Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Michele Welch, Recoupment Specialist.

ISSUE

Did Petitioner receive an overissuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

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 Michigan Combined Application Program (MiCAP) FAP recipient for the period of October 1, 2016 through March 31, 2017 (Exhibit A, p. 8).
2. In July 2016, Petitioner obtained employment.
3. Petitioner had income from employment during the period of October 1, 2016 through March 31, 2017 (Exhibit A, p. 26).

4. On February 3, 2020, the Department sent Petitioner a Notice of Overissuance stating Petitioner had been overissued FAP benefits in the amount of \$826 during the period of October 1, 2016 through March 31, 2017 (Exhibit A, pp. 1-6).
5. On February 10, 2020, Petitioner submitted a request for hearing disputing 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 was a MiCAP FAP recipient between the period of October 1, 2016 through March 31, 2017. MiCAP is a series of waivers that allows the Department to issue FAP benefits to Supplemental Security Income (SSI) individuals who qualify for the program. BEM 618, p. 1. Under the MiCAP program, an individual must receive SSI and have no other type of income. BEM 618, p. 1.

Petitioner obtained new employment in July 2016. As such, Petitioner was no longer eligible for FAP under MiCAP. Petitioner was only eligible for FAP benefits, which takes into consideration earned income. The Department testified that Petitioner failed to report the change employment/income. As a result, the income was not budgeted, and Petitioner received an overissuance in FAP benefits during the period of October 1, 2016 through March 31, 2017, due to client error.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 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. 6. An agency error is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 4. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705 (October 2018), p. 6. 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, 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. 10.

In support of its contention that Petitioner was overissued benefits, the Department presented FAP overissuance budgets for the period of October 1, 2016 through March 31, 2017 (Exhibit A, pp. 9-21). The Department calculated the benefits Petitioner should have received each month during the overissuance period based on the addition of Petitioner's unreported income. All of Petitioner's income was designated as unreported, and she did not receive the 20 percent earned income deduction. The Department received verification of Petitioner's income from Petitioner's employer and used it to calculate her actual income during the overissuance period (Exhibit A, pp. 24-26). The Department also presented Petitioner's FAP Benefit Summary Inquiry (Exhibit A, p. 8). The Benefit Summary Inquiry shows Petitioner was issued FAP benefits in the amount of \$1,026 in FAP benefits during the period of October 1, 2016 through March 31, 2017.

In support of its contention that the overissuance was a result of client error, the Department provided a Notice of Case Action sent to Petitioner on May 2, 2014 (Exhibit A, pp. 42-47). The Notice of Case Action advised Petitioner that she must report all changes to the Department within ten days, including any changes in income/employment. The Department also presented a redetermination submitted by Petitioner on [REDACTED], 2017 (Exhibit A, pp. 25-26). In the redetermination, Petitioner reported that she had income in addition to her SSI benefits. When asked if the redetermination was the first time that Petitioner reported the income, the Department representative stated she was unsure if that was the first time the income had been reported. The Department witness testified that she was not the individual that prepared the case and she did not review Petitioner's case file. Petitioner's AHR stated she was unsure if the income was reported.

The burden of proof is on the Department to show that it acted in accordance with policy. The Department must provide sufficient evidence to establish that an overissuance occurred, and the overissuance was a result of client error. The Department's testimony was too uncertain to be considered credible. Additionally, the Department did not provide Petitioner's case notes or Electronic Case File (ECF). The ECF consists of scanned documents, arranged by category and identified by a client name, recipient ID or case number, established for a particular client group. BAM 300 (October 2016), p. 1. The ECF contains all forms, documents and other evidence to the group's current and past eligibility. BAM 300, p. 1. Therefore, the undersigned ALJ cannot independently determine that Petitioner did not report the income. Thus, the Department failed to establish that the overissuance was a result of client error, as opposed to agency error.

As stated above, the Department's budgets factored all of Respondent's income as unreported. As the Department failed to establish that the income was not reported as a result of client error, Respondent would have been entitled to the 20% earned income

disregard. Therefore, the Department failed to follow policy when calculating the overissuance. Thus, the Department failed to establish there was an overissuance.

DECISION AND ORDER

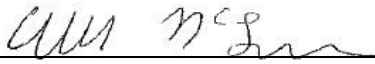
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner was overissued FAP benefits.

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. Petitioner did not receive an OI of FAP program benefits in the amount of \$826.
2. The Department is ORDERED to delete the OI and cease any recoupment and/or collection action.

EM/cg


Ellen McLemore
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

Via Email:

MDHHS-Kent-1-Hearings
M. Holden
D. Sweeney
BSC3- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

