



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: July 21, 2020
MOAHR Docket No.: 20-003899
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 15, 2020.

Petitioner appeared unrepresented.

The Department of Health and Human Services (Department) was represented by Michelle Welch, Recoupment Specialist.

Department Exhibit A.45 was offered and admitted into the record.

ISSUE

Did the Department properly determine that Petitioner was overissued 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. On [REDACTED] 2019, Petitioner applied for Food Assistance Program (FAP).
2. On February 26, 2019, Petitioner sent an e-mail to her worker to inform her that she was returning to work and earned income information.
3. The Department failed to correctly budget Petitioner's income based on the February 26, 2019 e-mail from Petitioner.

4. On April 10, 2019, the local office sent an e-mail to the recoupment specialist regarding a FAP overissuance (OI).
5. On April 22, 2020, the recoupment specialist calculated a FAP OI for the period from May 1, 2019 through December 31, 2019, totaling \$2,707.00, due to agency error.
6. On April 10, 2020, the Department issued a recoupment OI notice of case action.
7. On April 27, 2020, Petitioner filed a hearing request, requesting a reversal on the grounds that the error here was agency error.

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.

Applicable policy and procedure to the case herein is found at numerous manual items found in BAM and BEM. Corresponding federal regulations are found at 7 CFR 273.18.

In this case, pursuant income policy and corresponding federal regulations, the Department is required to count all income in calculating eligibility for the FAP program. In addition, federal and state law, and corresponding policy requires the Department to recoup FAP benefits where benefits were issued in error, whether client or agency error, with certain exceptions not applicable here. In fact, failure by the Department to collect any overpayments to FAP recipients, regardless as to whether they are client or agency error can subject the State of Michigan to significant financial penalties.

Here, Petitioner did not dispute any of the calculations and/or budgets submitted by the Department herein. Rather, Petitioner makes an equitable argument that because it was agency error, it is unfair to collect from Petitioner. Here, Petitioner offered no law or policy that would allow the Department to deviate from the federal mandate to collect overissues, regardless as to whether they are client or agency error. The law and state policy will not allow an individual to prevail and keep more welfare benefits than they are entitled to, based on an error made by a Department employee. It is noted here that there is no dispute that the benefits were issued, and, that Petitioner did utilize the FAP benefits for her personal benefit

In addition, as the Department is required to recoup, the undersigned has no power to deviate from policy or grant any equitable remedy.

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 was overpaid FAP benefits for the benefit period from May 1, 2019, through December 31, 2019.

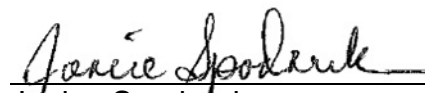
The Department may engage in any collection or recoupment as permitted by policy and procure, deducting any offsets already collected.

For these reasons and for the reasons stated on the record, the recoupment action is supported by credible evidence and the Department did act in accordance with policy and federal regulations. 7 CFR 216.18.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

JS/ml



Janice Spodarek
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

Allegan County DHHS – Via Electronic Mail

DHHS Department Rep.

MDHHS-Recoupment – Via Electronic Mail

OIG – Via Electronic Mail

L. Bengel – Via Electronic Mail

Petitioner

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