



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: September 18, 2020
MOAHR Docket No.: 20-005436
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 September 17, 2020, from Lansing, Michigan. Petitioner was represented by his mother and legal guardian, [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Eugene Brown, Recoupment Specialist.

ISSUE

Did the Department properly determine that Petitioner was overissued Food Assistance Program (FAP) benefits which the Department must 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 is a Food Assistance Program benefit recipient.
2. Petitioner is disabled and receives SSI as his income.
3. The Department conducted a quality control audit and determined that the Department incorrectly applied a shelter expense and home heating credit to Petitioner's FAP budget, and failed to update Petitioner's social security claim number until July 23, 2020.
4. Petitioner's income had not been updated since 2018.

5. The Department determined that Petitioner received an overissuance of FAP benefits from September 1, 2019, to August 31, 2020, in the amount of \$1,909.
6. On August 12, 2020, the Department sent Petitioner Notice of Over-issuance in the amount of \$1,909.
7. On August 17, 2020, Petitioner's Representative filed a request for hearing to contest the negative action.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Pertinent Department policy dictates:

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1 (1/1/2016).

Recoupment is a MDHHS action to identify and recover a benefit over issuance. A recoupment specialist (RS) is the specialist assigned to process over issuances and act as liaison with OIG, reconciliation and recoupment section (RRS), and other personnel involved with recoupment and collections. BAM 700 page 2

An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or Department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between Department divisions such as services staff.
- Data exchange reports were not acted upon timely (wage match, new hires, BENDEX, etc.).

If unable to identify the type, record it as an agency error. FIP, SDA, CDC and FAP Agency errors are not pursued if the estimated amount is less than \$250 per program. BEM 700, page 5

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. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, and any of the following occurred:

- The hearing request is later withdrawn.
- MAHS denies the hearing request.
- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.
- The hearing decision upholds the Department's actions; see BAM 600. BAM 700 page 7

When a potential over issuance is discovered the following actions must be taken:

1. Immediately correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
2. Obtain initial evidence that an over issuance potentially exists.
3. Determine if it was caused by Department, provider or client actions.
4. Refer any over issuances needing referral to the RS within 60 days of suspecting one exists.

Exception: Office of Quality Assurance (OQA) discovered over issuances must be referred to the RS within 7 days of receipt of the OQA findings. OQA has already verified one exists. FIP, SDA, CDC and FAP Within 60 days of suspecting an over issuance exists, complete a DHS-4701, Over issuance Referral, and refer the following over issuances to the RS for your office:

- All client and agency errors over \$250.
- All suspected IPV errors.
- All CDC provider errors. BAM 700 page 10

Petitioner's authorized Hearings Representative testified that she reported all income when she received the proper forms to do so. Petitioner's representative testified that Petitioner was paying \$250.00 per month in rent and \$50.00 for each utility. He lives with his legal guardian because he is mentally incapacitated and Social Security requires that he pay some rent and utilities. Petitioner alleged that she turned in rent and utility receipts to the Department whenever she was asked to do so. The Department caseworker then budgeted Petitioner for \$250.00 per month in rent and gave Petitioner the heat and utility standard. Petitioner's Representative's testimony is credible under the circumstances. Petitioner receives only Social Security Disability income. He lives with his mother and legal guardian, to whom he pays rent and utilities. Evidence on the record indicates the Department properly budgeted Petitioner's income and expenses and determined that Petitioner was eligible to receive a shelter expense and heat and utility standard. Petitioner's Representative's testimony was not rebutted by evidence on the record.

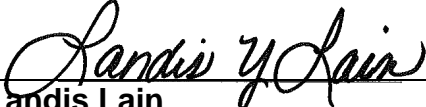
The Department Representative testified that a case read was conducted and there was no documentation of rent paid in the case file. However, the recoupment specialist did not consult with the caseworker who actually worked on the case to determine how that caseworker satisfied the verification process. The caseworker who worked on the case was satisfied that Petitioner did pay rent and gave the Petitioner the appropriate deductions as a result. The Department has not established this case by a preponderance of the evidence. The Department has not determined by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that there was error which resulted in overissued FAP benefits which must be recouped.

Petitioner has not been overissued FAP benefits in the amount of \$1,909.00 based upon Agency error. Petitioner's receipt of FAP was consistent with the evidence brought forward by Petitioner's Authorized Hearings Representative. The Department has not established its recoupment case by a preponderance of the evidence.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**. The Department is **ORDERED** to cancel the Recoupment process in accordance with Department policy within ten days of receipt of this Decision and Order.

LL/hb



Landis Lain
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

Muskegon County, DHHS

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

OIG via electronic mail

DHHS Department Rep.

MDHHS-Recoupment via electronic mail

Petitioner

[REDACTED], MI [REDACTED]