



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: January 14, 2021
MOAHR Docket No.: 20-006478
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. The hearing was adjourned three times. After due notice, a telephone hearing was held on January 5, 2021. Petitioner was represented by her attorney Matthew Secret. Petitioner testified on her own behalf. The Department was represented by Shelley M McCormick, Assistant Attorney General. Latoi Patillo, Overpayment Specialist, testified on behalf of the Department.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that Petitioner had received an overissuance of Food Assistance Program (FAP) benefits that must be recouped?

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 ██████████, 2013, the Department received Petitioner's application for Medical Assistance (MA) where she reported being responsible for medical expenses stemming from a hospitalization. DHHS Exhibit L.
2. On May 31, 2019, the Department received Petitioner's Redetermination (DHS-1010) form where she acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits, including the duty to reimburse the Department for overissuances of benefits. DHHS Exhibit I.
3. On her May 31, 2019, Redetermination form, Petitioner reported that she was disabled, receiving social security benefits, and that she was a Medicare recipient. DHHS Exhibit I.

4. Petitioner reported being responsible for “Med. Bills” but did not list the expense amounts on her May 31, 2019, Redetermination form. DHHS Exhibit I.
5. On May 31, 2019, the Department received verification that Respondent was responsible for paying rent in the monthly amount of \$548. DHHS Exhibit G.
6. Property tax records indicate that Petitioner was responsible for paying property taxes for her residence in the annual amount of \$19.42. DHHS Exhibit G.
7. On June 1, 2017, the Department received verification that Respondent was responsible for homeowner’s insurance in the annual amount of \$451.91. DHHS Exhibit G.
8. On July 6, 2020, the Department received verification that Respondent was responsible for homeowner’s insurance in the annual amount of \$712 effective January 24, 2020. DHHS Exhibit G.
9. On June 24, 2019, the Department notified Petitioner that she was eligible for a \$192 Food Assistance Program (FAP) benefits as a household of one receiving a gross monthly income of \$[REDACTED]. The Department also notified Petitioner that she was receiving credit for monthly housing expenses of \$592 and monthly medical expenses of \$696. DHHS Exhibit J.
10. Petitioner received Food Assistance Program (FAP) benefits totaling \$2,324 from August 1, 2019, through July 31, 2020. DHHS Exhibit D.
11. From August 1, 2019, through July 31, 2020, Petitioner received credit for paying a \$135.50 Medicare Premium, \$337.07 for medical services, and \$248.11 for prescriptions drugs in each month. DHHS Exhibit F.
12. From August 1, 2019, through July 31, 2020, Petitioner received credit for paying housing expenses of \$492.03 in each month. DHHS Exhibit F.
13. On July 9, 2020, the Department notified Petitioner that she was eligible for a \$16 monthly allotment of Food Assistance Program (FAP) benefits as a household of one receiving a gross monthly income of \$[REDACTED]. The Department also notified Petitioner that she was receiving credit for monthly housing expenses of \$508 and monthly medical expenses of \$110. DHHS Exhibit K.
14. On July 9, 2020, Petitioner’s Food Assistance Program (FAP) benefits case was referred to an Overpayment Specialist for a review into whether she had received an overissuance of Food Assistance Program (FAP) benefits. DHHS Exhibit C.
15. On September 21, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing her that a \$2,134 overissuance of Food Assistance Program (FAP) benefits would be recouped due to Department error. DHHS Exhibit H.

16. On October 1, 2020, the Department received Petitioner's timely request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits. DHHS Exhibit B.
17. Effective March 27, 2020, active FAP groups who were not currently receiving the maximum amount allowed for their group size began receiving a supplement to bring their benefit amount up to the maximum amount allowed for their group size. DHHS Economic Stability Administration (ESA) 2020-15.
18. DHHS Economic Stability Administration (ESA) 2020-15 as been reauthorized by the Department in each month since March 27, 2020, with the most recent revision being issued on December 11, 2020. DHHS Exhibit Q.
19. The maximum allotment of Food Assistance Program (FAP) benefits available to a household of one from August 1, 2019, through September 30, 2019, was \$194. Department of Health and Human Services Reference Table Manual (RFT) 260 (October 1, 2018), p 1.
20. The maximum allotment of Food Assistance Program (FAP) benefits available to a household of one from October 1, 2019, through September 30, 2020, was \$194. Department of Health and Human Services Reference Table Manual (RFT) 260 (October 1, 2019), p 1.

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) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq*, and Mich Admin Code, R 400.3001 through 400.3011.

For the purposes of determining eligibility for FAP benefits, the Department will allow a shelter expenses when the FAP group has a shelter expenses that includes rent, property taxes, an insurance on the home structure. If the group is responsible for heating expenses separately from their housing expenses, the group receives a standard heat and utility deduction. Additional expenses for pets and insurance on personal belongs are not allowed. Department of Health and Human Services Bridges Eligibility Manual (BEM) 554.

When determining countable expenses towards eligibility for FAP benefits, the Department will only consider the medical expenses of senior/disabled/veterans in the

eligible household. Recipients of FAP benefits are not required to but may voluntarily report medical expenses during the benefit period. BEM 554, pp 8-9.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

Petitioner was an ongoing recipient of FAP benefits from August 1, 2019, through July 31, 2020. In each of those months, Petitioner received the maximum allotment of FAP benefits available for a household of one. Petitioner received FAP benefits totaling \$2,324 during that period.

On June 24, 2019, the Department notified Petitioner that she was eligible for a \$192 monthly allotment of FAP benefits as a household one. These benefits were based on a gross monthly income of \$██████, housing costs of \$592, and medical expenses of \$696. Department records indicate that Petitioner was receiving credit for ongoing medical expenses totaling \$730, less the standard \$35 deduction as directed by BEM 556. The Department continued to credit Petitioner with these medical and housing expenses in each month through July 31, 2020.

On July 9, 2020, the Department discovered that the medical expenses Petitioner was being credited with were not supported by the verification documents in her benefits file. It is not disputed that Petitioner is disabled and that she is eligible for a deduction for out-of-pocket medical expenses. It is also not disputed that Petitioner is responsible for Medicare Part B premiums.

However, the hearing record supports a finding that Petitioner did not incur the reoccurring medical expenses of \$337 and \$248 that she received credit for in each month from August 1, 2019, through July 31, 2020. The Department does not allege that Petitioner misrepresented her medical expenses during that period but concedes that these deductions were granted by the Department in error.

Further, Petitioner's housing expenses from August 1, 2019, through July 31, 2020, were based on a verification document received on May 31, 2019, that show a base rent of \$553. Upon further review of this document, Petitioner was receiving a \$5 discount on her rent and was only responsible to pay \$548. The Department does not allege that Petitioner misrepresented her housing expenses during that period but concedes that her housing deduction was determined by the Department in error.

On July 9, 2020, the Department notified Petitioner that she was eligible for a \$16 monthly allotment of FAP benefits as a household of one. Respondent receives a fixed income consisting solely of social security benefits in the gross monthly amount of \$██████. Petitioner receives a \$161 standard deduction and a \$110 medical expenses deduction for her Medicare Part B premium (after the \$35 standard deduction). Reducing Petitioner's gross income by these deductions leaves her with an adjusted gross income of \$██████.

Respondent is entitled to a \$381 deduction for shelter expenses, which was determined by reducing the total of her housing expense and the standard heat and utility deduction by 50% of her adjusted gross income.

Reducing Petitioner's adjusted gross income by her shelter deduction leaves her with a \$█ net monthly income. A household of one with a \$█ net monthly income is entitled to a \$16 monthly allotment of FAP benefits as of October 1, 2020. RFT 260 (October 1, 2020), p 13.

From August 1, 2019, through July 31, 2020, Respondent received FAP benefits totaling \$2,324, which was the maximum amount of FAP benefits a household of one could be entitled to. These FAP benefits were determined in error, which was caused by the Department improperly crediting Petitioner with ongoing medical expenses in each month that she did not actually incur. Further, the Department had failed to account for the \$5 discount to her housing expenses in each month after failing to observe this discount on the verification document.

If the Department had properly determined Petitioner's eligibility for FAP benefits in each month from August 1, 2019, through July 31, 2020, Petitioner would have been eligible for FAP benefits totaling \$190. Therefore, Petitioner received a \$2,134 overissuance of FAP benefits.

The evidence supports a finding that Petitioner received FAP benefits that he was not eligible for in other months as well. Where an overissuance of FAP benefits is issued due to Department error, and it was not disputed that the overissuance in this case was caused by Department error, the overissuance period begins the first month when benefits issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred, whichever 12-month period is later. Department of Health and Human Services Bridges Administrative Manual (BAM) 705 (October 1, 2018), p 5. In this case, Petitioner's case was referred to the Overpayment Specialist¹ on July 9, 2020.

Overissuances resulting from Department errors are not pursued if the estimated amount is less than \$250 per program. BAM 705, p 1. In this case, the overissuance of FAP benefits exceeds \$250.

Petitioner's attorney argues that Petitioner could not be expected to know based on the June 24, 2019, notice of her eligibility for FAP benefits that her monthly allotment of FAP benefits had been improperly determined. This Administrative Law Judge finds that it not unreasonable that a FAP recipient might not realize that the Department had overlooked the \$5 discount to her rent after adding in her annual home insurance premium divided by 12 months and her properly tax assessments divided by 12 months. It is also not unreasonable for her to overlook that the sum of Medicare premiums and other uncovered medical expenses less the \$35 deduction were not determined

¹ BAM 705 refers to a Recoupment Specialist.

properly by the Department. These errors went undiscovered by trained professionals for an extended period of time.

However, the Department concedes that it was its own error that caused the overissuance of FAP benefits. An agency error, or Department error, is caused by incorrect actions by the Michigan Department of Health and Human Services staff or department processes. No evidence was presented on the record that Petitioner reported false, misleading, or incomplete information to the Department.

Despite the fact that the Department had failed to act on all the available information, Petitioner is not entitled to any FAP benefits that she was not eligible for. Further, FAP benefits are a federally funded program that is administered by the Department, and the Department is obligated to establish and collect benefits that are overpaid. 7 CFR 273.18(a).

Petitioner's attorney argued that it will be a hardship for Petitioner to repay a \$2,134 overissuance of FAP benefits. Petitioner is disabled and lives on a fixed income.

The Department can compromise (reduce or eliminate) an overissuance if its is determined that a household's economic circumstances are such that the overissuance cannot be paid within three years. A request for a policy exception must be made from the recoupment specialist to the Overpayment, Research and Verification Section office. Department of Health and Human Services Bridges Administrative Manual (BAM) 724 (January 1, 2021), p 1.

In this case, Petitioner has failed to establish that the overissuance of FAP benefits cannot be paid within three years, or that Petitioner's case has been improperly denied consideration for a compromised claim.

Petitioner's attorney argues that if the Department had properly determined Petitioner's eligibility for FAP benefits, then she would have received a COVID-19 Response Emergency Food Assistance Allotment as directed by the Department's memorandum ESA 2020-15 effective March 27, 2020. Petitioner's attorney argues that this supplement should be deducted from the overissuance of FAP benefits and that these supplemental benefits should reduce the overissuance below the \$250 threshold for collection.

Petitioner did not receive any supplemental FAP benefits but instead received the maximum allotment of FAP benefits available to a household of one. Petitioner was not eligible for the maximum allotment of FAP benefits, and therefore she received an overissuance of FAP benefits. This overissuance of FAP benefits was caused by Department error, and the Department is required to recoup that overissuance. Whether Petitioner is eligible for retroactively issued supplemental FAP benefits as a household not receiving the maximum benefit allotment under the authority of ESA 2020-15 is not an issue that falls under the jurisdiction of MOAHR. These supplemental benefits have been authorized by a waiver from the Food and Nutrition Service (FNS) and not an entitlement of the Food and Nutrition Act of 2008. There is no entitlement to


the supplementary FAP benefits, and therefore there is no entitlement to a hearing protesting the denial of those benefits.

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 received a \$2,134 overissuance of Food Assistance Program (FAP) benefits during the period of August 1, 2019, through July 31, 2020, and the Department is required to recoup this debt.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/nr



Kevin Scully
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

Amber Gibson
5303 South Cedar
PO BOX 30088
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Ingham County DHHS- via electronic mail

OIG Hearings- via electronic mail

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