



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: December 7, 2020
MOAHR Docket No.: 20-006794
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 November 25, 2020. ██████████, the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by April Ketner, Recoupment Specialist (RS).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-57.

ISSUE

Did the Department properly determine that Petitioner's group received Food Assistance Program (FAP) benefits that they were not eligible for and 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 an ██████████, 2019 application for FAP and cash assistance, Petitioner reported household member MF was employed by ██████████, 20 hours per week at ██████████ per hour. It was noted that hours were reduced because of weather, the work is outside, and there would be no more work after this month. (Exhibit A, pp. 38-44)
2. On October 31, 2019, the Department received an employer statement documenting that MF works 20 hours at ██████████ per hour and is paid cash. (Exhibit A, p. 24)

3. A November 5, 2019, case comment shows that Petitioner reported MF is still working for [REDACTED], 20 hours per week at [REDACTED] per hour, and paid every two weeks. While the income was supposed to end at the end of October, they found indoor work so MF is still working. It was also discussed that the letter from the employer was not in good order and what is needed on an employer statement. (Exhibit A, p. 3)
4. On November 7, 2019, the Department received an employer statement documenting that MF works 20 hours at [REDACTED] per hour and is paid cash. (Exhibit A, p. 23)
5. On November 14, 2019, a Notice of Case Action was issued to Petitioner regarding the FAP approval for the household size of two, Petitioner and MF. The Notice also advised Petitioner of her responsibility to report changes. Specifically, Petitioner was a simplified reporter and was only required to report when the household gross monthly income exceeded \$1,832.00. (Exhibit A, pp. 45-49)
6. On November 14, 2020, a Simplified Six Month Review was issued to Petitioner, further explaining the process. This advised that instead of coming in for a review every six months, Petitioner would receive a Semi-Annual Contact Report form in the mail to complete. In part, Petitioner would be required to provide information about changes in household income of more than \$100.00. (Exhibit A, pp. 50-51)
7. On February 25, 2020, the Department Received a Semi-Annual Contact Report from Petitioner. Petitioner reported that the household's monthly gross income had not changed by more than \$100.00 from the [REDACTED] used in the FAP budget and that no one had a change in earnings because they changed, started, or stopped a job. (Exhibit A, pp. 52-55)
8. On February 26, 2020, the Department received a Renew Benefits for FAP from Petitioner. Petitioner reported MF's job with Jack Downy was unchanged income and employment. Petitioner reported that child support for MF ended May 31, 2019, because MF graduated and turned 18. (Exhibit A, pp. 56-57)
9. A report from The Work Number documents that MF started working for [REDACTED] on November 13, 2019, and his first pay was November 22, 2019. MF's earnings through July 17, 2020, were documented. (Exhibit A, pp. 25-26)
10. Petitioner received FAP benefits of \$355.00 per month for February and March 2020. (Exhibit A, p. 10)
11. The Department determined that for February and March 2020, Petitioner received a total of \$710.00 of FAP benefits, but was only eligible for \$32.00 of FAP benefits. (Exhibit A, pp. 11-21)

12. On September 25, 2020, the Department sent Petitioner a Notice of Overissuance instructing her that a \$678.00 overissuance of FAP benefits occurred from February 1, 2020 through March 31, 2020 and would be recouped. (Exhibit A, pp. 33-37)
13. On October 19, 2020, the Department received Petitioner's request for a hearing, contesting the recoupment of FAP benefits. (Exhibit A, pp. 6-7)

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.

Pursuant to BAM 105, clients have a responsibility to cooperate with the Department in determining initial and ongoing eligibility. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, July 1, 2020, p. 9. For FAP, simplified reporting households must report when the household monthly income exceeds the monthly gross income limit for its household size. 7 CFR 273.12(a)(5)(ii)(G)(1) Similarly, Department policy regarding FAP simplified reporting states:

Simplified reporting groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. **No** other change reporting is required.

Exception: Simplified Reporting groups must report lottery and gambling winnings of \$3,500 or more.

If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group's SR income limit; see RFT 250, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their

semi-annual contact or redetermination that make them ineligible for SR.

Note: Changes known to the department must be acted on even though the client is required to report only if the group's total gross income exceeds the SR income limit for their group size.

BAM 200, January 1, 2020, p. 1.

For FAP, the Department will act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220, July 1, 2020, p. 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p. 12.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, October 1, 2018, p. 1.

In this case, the Department determined that a FAP OI occurred due to client error. Specifically, Petitioner failed to report household member MF's employment and earnings from working at Meijer.

On the [REDACTED], 2019, application for FAP and cash assistance, Petitioner reported household member MF was employed by [REDACTED], 20 hours per week at [REDACTED] per hour. It was noted that hours were reduced because of weather, the work is outside, and there would be no more work after this month. (Exhibit A, pp. 38-44) On October 31, 2019, the Department received an employer statement documenting that MF works 20 hours at [REDACTED] per hour and is paid cash. (Exhibit A, p. 24) A November 5, 2019, case comment shows that Petitioner reported MF is still working for [REDACTED], 20 hours per week at [REDACTED]0 per hour, and paid every two weeks. While the income was supposed to end at the end of October, they found indoor work so MF is still working. It was also discussed that the letter from the employer was not in good order and what is needed on an employer statement. (Exhibit A, p. 3) On November 7, 2019, the Department received an employer statement documenting that MF works 20 hours at [REDACTED] per hour and is paid cash. (Exhibit A, p. 23)

On November 14, 2019, a Notice of Case Action was issued to Petitioner regarding the FAP approval for the household size of two, Petitioner and MF. Earned income of [REDACTED] was included in the budget summary. The Notice also advised Petitioner of her responsibility to report changes. Specifically, Petitioner was a simplified reporter and was only required to report when the household gross monthly income exceeded \$1,832.00. (Exhibit A, pp. 45-49) On November 14, 2020, a Simplified Six Month Review was issued to Petitioner further explaining the process. This advised that instead of coming in for a review every six months, Petitioner would receive a Semi-Annual Contact Report form in the mail to complete. In part, Petitioner would be

required to provide information about changes in household income of more than \$100.00. (Exhibit A, pp. 50-51)

On February 25, 2020, the Department Received a Semi-Annual Contact Report from Petitioner. Petitioner reported that the household's monthly gross income had not changed by more than \$100.00 from the ██████ used in the FAP budget and that no one had a change in earnings because they changed, started, or stopped a job. (Exhibit A, pp. 52-55) On February 26, 2020, the Department received a Renew Benefits for FAP from Petitioner. Petitioner reported MF's job with ██████ was unchanged income and employment. Petitioner reported that child support for MF ended May 31, 2019, because MF graduated and turned 18.¹ (Exhibit A, pp. 56-57)

However, a report from The Work Number documents that MF started working for ██████ on November 13, 2019, and his first pay was November 22, 2019. MF's earnings through July 17, 2020, were documented. (Exhibit A, pp. 25-26) The Department added this unreported earned income to the FAP budgets, which already included the ██████ from the reported income from MF's working for ██████. The Department determined that Petitioner's group had exceeded the applicable simplified reporting limit each month starting in December 2019. (Exhibit A, pp. 3-4) If Petitioner had timely reported this increased income, the Department would have redetermined FAP eligibility by February 1, 2020.

Petitioner received FAP benefits of \$355.00 per month for February and March 2020. (Exhibit A, p. 10) The Department determined that Petitioner received a total of \$710.00 of FAP benefits but was only eligible for \$32.00 of FAP benefits for February and March 2020. (Exhibit A, pp. 11-21) Therefore, Petitioner received a \$678.00 overissuance of FAP benefits.

Petitioner explained that she thought she had taken her son off the FAP case. (Petitioner Testimony) On the ██████, 2019, Assistance Application, it appears that Petitioner attempted to apply for FAP only for herself. However, MF was listed as a household member. Petitioner reported that no one buys and makes food separately from the rest of the household. Further, MF was under age 22 based on his date of birth of ██████, 2001. (Exhibit A, pp. 38-44) Pursuant to BEM 212 policy, in general, persons who live together and purchase and prepare food together are members of the FAP group. Further, parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, July 1, 2019, pp. 1 and 6. Accordingly, The Department properly included MF in Petitioner's FAP group. It is noted that the November 14, 2019, Notice of Case Action specifically showed the FAP approval for the household size of two, Petitioner and MF. (Exhibit A, pp. 45-49)

¹ During the hearing proceeding, when the bottom of this page of the Renew benefits was initially reviewed, it appeared that Petitioner had attempted to report that MF's employment with Jack Downy ended on May 31, 2019. (Exhibit A, p. 56) However, upon further review and in context with the top of the next page of the form, what Petitioner reported ending on May 31, 2019, was the additional income from child support. Even though the additional income type was child support, the phrasing of the form refers to the "job" ending and the reason for the end of the "job." (Exhibit A, pp. 56-57)

Petitioner asserts that MF stopped working for Jack Downy when he started working at [REDACTED]. (Petitioner Testimony) However, on the February 25, 2020, Semi-Annual Contact Report and the February 26, 2020, Renew Benefits, Petitioner indicated that MF's employment and earnings with [REDACTED] had not changed. Therefore, the Department properly continued to include these earnings in the FAP budgets based on the information available to them. Further, Petitioner has not provided any documentation to verify that MF's employment with [REDACTED] ended.

Petitioner testified that she believed MF's earnings did not change by more than \$100.00 when he changed jobs. Therefore, Petitioner did not believe she had to report this change. (Petitioner Testimony) The monthly income budgeted from MF working for [REDACTED] was [REDACTED] per month. (Exhibit A, pp. 45 and 53) However, the report from The Work Number documents that MF's earnings were significantly more than \$100.00 greater than this amount each month starting in December 2019. The December 2019 gross earnings total almost [REDACTED]; the January 2020 gross earnings total over [REDACTED] the February 2020 gross earnings totaled over [REDACTED]; and the March 2020 gross earnings totaled over [REDACTED] (Exhibit A, pp. 25-26)

Petitioner's testimony indicated she had some confusion regarding who was included in the FAP group and what her reporting responsibilities were. Petitioner indicated she takes strong medication that affect her ability to understand and comply with the reporting requirements. (Petitioner Testimony) On the October 31, 2019, Assistance Application, Petitioner reported that she had a disability or a physical/mental/emotional health condition and noted a recent behavioral health hospitalization. (Exhibit A, pp. 41 and 44) On the February 26, 2020, FAP Renew Benefits, Petitioner noted that she was still unable to work, is taking narcotics for pain, and going to treatment for behavioral health. (Exhibit A, p. 57) However, whether Petitioner mistakenly or intentionally, failed to report the changes with earned income in her household is not at issue in this case. Regardless of whether the error was a mistake or intentional, BAM 700 is clear that when a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, October 1, 2018, p. 1.


Overall, the failure to report and verify the change with the household's gross earned income, specifically MF's employment earnings from [REDACTED] resulted in a \$678.00 overissuance of FAP benefits from February 1, 2020, through March 31, 2020, based on the information that was available to the Department.

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 \$678.00 overissuance of FAP benefits that must be recouped.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

CL/ml



Colleen Lack
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

