



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 15, 2017
MAHS Docket No.: 17-014392
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 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 December 7, 2017, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Irma Aranda-Cruz, Family Independence Manager, and Jennifer Braxmaier, 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 FAP recipient.
2. Petitioner was a member of a group that consisted of herself and her minor child.
3. On October 1, 2013, Petitioner obtained employment.
4. On October 15, 2013, the Department sent Petitioner a New Hire Client Notice.
5. On [REDACTED], 2014, Petitioner submitted an application for State Emergency Relief (SER) benefits (Exhibit F).

6. On October 12, 2017, the Department sent Petitioner a Notice of Overissuance informing her that she had been overissued FAP benefits in the amount of \$1,324 for the period of December 1, 2013, through March 31, 2014, (Exhibit A).
7. On October 30, 2017, 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's obtained new employment on October 1, 2013. The Department testified the new income was not reported to the Department until Petitioner completed an SER application on [REDACTED], 2014. As a result, the income was not initially budgeted and Petitioner received an overissuance in FAP benefits during the period of December 1, 2013, through March 31, 2014, in the amount of \$1,324.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), 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 (January 2016), 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 (January 2016), p. 10.

The Department presented an Issuance Summary and corresponding FAP overissuance budgets covering December 2013 through March 2014. The Department calculated Petitioner's household income using the employment verification that was

submitted by Petitioner's employer at the time. The presented budgets factored all of Respondent's household earned income as unreported. However, Respondent testified she submitted a New Hire Client Notice form and pay statements to the Department in October 2013. Respondent testified she initially attempted to fax the form and pay statements to the Department, but the fax would not send. Petitioner stated her worker informed her she could email the information. Petitioner submitted documents to show she emailed her worker on October 26, 2013, with two items attached (Exhibit 1).

The Department testified that Petitioner's case file records from October 2013 had been destroyed. The Department stated that it only retains physical documents for a period of three years. In October 2013, Petitioner's case file would have been a physical file, as Van Buren County had not yet started an electronic casefile system. As a result, the Department was unable to view Petitioner's casefile during the period of the overissuance. The Department testified it did review the case comments and the reception log from the overissuance period. The Department stated it did not see any indication Petitioner submitted proof of her new employment/income. However, the Department did not provide the case comments or reception logs. In the absence of such evidence, the Department failed to establish that Petitioner failed to report her income and that the error was committed on behalf of the Respondent, not the Department.

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

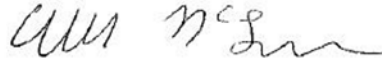
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner was overissued 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. Respondent did not receive an OI of FAP program benefits in the amount of \$1,324.

2. The Department is ORDERED to delete the OI and cease any recoupment and/or collection action.



EM/

Ellen McLemore

Administrative Law Judge

for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

MDHHS-VanBuren-Hearings

DHHS Department Representative

MDHHS-Recoupment

Petitioner



M Shumaker
E McLemore
MAHS