



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 19, 2017
MAHS Docket No.: 17-015161
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 19, 2017, from Detroit, Michigan. Petitioner was present with her Living Together Partner (LTP), [REDACTED]. The Department of Health and Human Services (Department) was represented by Rebecca Webber, Overpayment 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. On February 1, 2017, Petitioner submitted a redetermination pursuant to her Medical Assistance (MA) benefit case (Exhibit J). In the redetermination, Petitioner indicated her household consisted of herself, her daughter, and her granddaughter.
2. On [REDACTED], 2017, Petitioner submitted an application for FAP benefits (Exhibit K). In the application, Petitioner indicated her household consisted solely of herself.

3. On [REDACTED], 2017, Petitioner submitted an application for State Emergency Relief (SER) benefits. In the application, Petitioner indicated her household consisted of herself, her daughter, her granddaughter, and her LTP (Exhibit L).
4. On February 3, 2017, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefits were approved based on a group size of three (Exhibit M).
5. On November 7, 2017, the Department sent Petitioner a Notice of Overissuance informing her that she had been overissued FAP benefits for the period of February 1, 2017, through July 31, 2017 (overissuance period) in the amount of \$2,573 (Exhibit A).
6. On November 15, 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, the Department determined that Petitioner received an overissuance of FAP benefits in the amount of \$2,573 during the overissuance period. Petitioner submitted a redetermination pursuant to her MA case on February 1, 2017. In the redetermination, Petitioner indicated her household consisted of herself, her daughter, and her granddaughter. Also on [REDACTED], 2017, Petitioner submitted an application for FAP benefits. In the application, Petitioner stated her household consisted solely of herself. Petitioner was approved for FAP benefits with a group size of three based on the information provided in the redetermination.

FAP budget calculations require the consideration of the group size. The Department will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (January 2017), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together whether the people living together purchase and prepare food together or separately, and whether the person(s)

resides in an eligible living situation. BEM 212, p. 6. Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share only an access area such as an entrance or hallway or non-living area such as a laundry room are not considered living together. BEM 212, p. 3. The phrase, purchase and prepare together, is meant to describe persons who usually share food in common. BEM 212, pp. 5-6. Persons usually share food in common if any of the following conditions exist: they each contribute to the purchase of food, they share the preparation of food, regardless of who paid for it or they eat from the same food supply, regardless of who paid for it. BEM 212, p. 6. In general, persons who live together and purchase and prepare food together are members of the FAP group. BEM 212, p. 6.

The Department received a referral on October 26, 2017, indicating Petitioner's daughter and granddaughter have not lived with her since January 2017, and that Petitioner was living with her husband. The Department received a correspondence from Social Planning and Children's services Department in [REDACTED] (Exhibit G). The correspondence states that Petitioner's daughter has been receiving benefits since January 2017. Petitioner stated that her daughter was in the process of moving to [REDACTED]. Petitioner testified that her daughter and her granddaughter would go to [REDACTED] for a period of weeks and would return for a period of weeks during February and March 2017. Petitioner stated her daughter lived solely in [REDACTED] starting in April 2017.

The Department also testified it received information that Petitioner was married to the individual that she listed as her LTP in the [REDACTED], 2017 SER application. The Department did not provide any evidence Petitioner was married to her LTP. However, Petitioner testified that she has lived with her LTP since October 2016. Petitioner also testified that she and her LTP often purchase and prepare meals together. Petitioner and her LTP store their food in the same location.

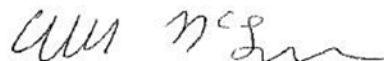
As a result of the Department's investigation, it was determined that Petitioner's FAP group should not have included her daughter and granddaughter. The Department determined Petitioner's group should have included Petitioner and her LTP. When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. In support of its contention that Petitioner was overissued benefits, the Department presented Petitioner's Benefit Summary showing she was approved for FAP benefits in the amount of \$2,621 during the overissuance period (Exhibit B). The Department also presented overissuance budgets showing what Petitioner should have received with the removal of her daughter and granddaughter, and the addition of her LTP (Exhibit E). The budgets are based on a group size of two and include Petitioner's LTP's unearned and earned income (Exhibits C and D) that was not reported during the overissuance period.

The Department properly determined that Petitioner's daughter and granddaughter should not have been included in the FAP group during the overissuance period. Petitioner's testimony that her daughter and granddaughter were spending time at her residence was not credible. Petitioner submitted two applications and a redetermination during [REDACTED] 2017. In each document that was submitted in [REDACTED] 2017, Petitioner indicated a different household size. Petitioner was extremely inconsistent regarding her household size, and therefore, was not a credible witness. The Department presented sufficient evidence to establish that Petitioner's daughter and granddaughter have been residing in [REDACTED] since January 2017. Thus, the Department acted in accordance with policy when it removed Petitioner's daughter and granddaughter from the FAP group.

The Department also acted in accordance with policy when it added Petitioner's LTP to her FAP group. Petitioner acknowledged that she was living with her LTP during the overissuance period and that they share food. Per policy stated above, Petitioner and her LTP should be in the same FAP group. According to the overissuance budgets, Petitioner was approved to receive \$2,621 in FAP benefits during the overissuance period. However, Petitioner was only entitled to receive \$48 in FAP benefits. Therefore, the Department established that Petitioner was overissued \$2,573 in FAP benefits during the overissuance period.

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 acted in accordance with Department policy when it determined Petitioner was overissued benefits in the amount of \$2,573 during the period of February through July 2017. Accordingly, the Department's decision is **AFFIRMED**.



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



DHHS Department Rep.

MDHHS-Recoupment
235 S Grand Ave
Suite 1011
Lansing, MI
48909

Petitioner



M Shumaker
E McLemore
MAHS