



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: February 7, 2018
MAHS Docket No.: 17-016410
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 February 5, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Robert Bush, Assistance Payments Supervisor, and Patrick Lynaugh, 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. Petitioner was an ongoing FAP recipient.
2. Petitioner was a member of a group that consisted of herself and four other individuals, including her Living Together Partner (LTP), [REDACTED].
3. Petitioner and her LTP had self-employment income.
4. On June 2, 2015, Petitioner submitted a redetermination indicating her LTP was a member of the group and that he had self-employment income (Exhibit G). Petitioner did not indicate in the redetermination the gross amount of her LTP's self-employment income.

5. On [REDACTED], 2015, Petitioner completed a Semi-Annual, and again indicated her LTP was a member of the group (Exhibit H). Petitioner stated in the Semi-Annual that her household gross income did not change by more than \$100 from the amount that was previously budgeted, which was \$669.
6. On June 15, 2016, Petitioner completed another redetermination (Exhibit I). In the redetermination, Petitioner listed her LTP as a group member and that he had income from self-employment. In the redetermination, Petitioner indicated that she sent the Department her LTP's tax information for his self-employment income.
7. On November 28, 2017, the Department sent Petitioner a Notice of Overissuance informing Petitioner that she was overissued FAP benefits in the amount of \$9,702 for the period of July 1, 2015, through December 31, 2016 (overissuance period).
8. On December 26, 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 testified that Petitioner underreported her LTP's self-employment income, resulting in an overissuance of FAP benefits. The Department sent Petitioner a Notice of Overissuance on November 28, 2017, informing Petitioner that she received an overissuance of FAP benefits in the amount of \$9,702 for the period of July 1, 2015, through December 31, 2016.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (May 2014 and October 2016), p. 1. The Department testified that when Petitioner's LTP's income was properly budgeted, the group exceeded the gross income limit. Thus, the FAP group was not entitled to any FAP benefits. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (July 2015 and October 2015), p. 1. Gross income is the amount of income before any deductions such as taxes or garnishments. BEM 500 (July 2015 and January 2016), p. 4. However, there is one

exception. The amount of self-employment income before any deductions is called total proceeds. BEM 500, p. 4. The gross amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions. BEM 500, p. 4. Gross income limitations are based on group size and are set forth in RFT 250 (columns A and D). When determining net income for a non-SDV FAP group, the Department allows deductions for certain expenses such as: dependent care expenses, excess shelter and court ordered child support. BEM 554 (October 2014 and June 2016). The Department will also reduce the gross countable earned income by 20 percent and is known as the earned income deduction when determining the net income. BEM 550, p.1 Net income limitations are based on group size and are set forth in RFT 250 (column B).

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 (July 2014 and 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 (October 2014 and January 2016), p. 10.

The Department testified that Petitioner consistently underreported her LTP's self-employment income, and therefore, the overissuance was a result of client error. Petitioner testified that she always produced her LTP's tax information, and therefore, any miscalculation of her FAP benefits was a result of agency error. However, the Department stated that Petitioner's household income exceeded the *gross* income limit, and therefore, the earned income deduction was not applicable. Thus, a determination of whether the miscalculation of FAP benefits was a result of agency error or client error is unnecessary. The Department must only establish that it properly determined Petitioner was over the gross income limit for her household size, and therefore, not entitled to any FAP benefits during the overissuance period.

The Department presented an Issuance Summary and corresponding FAP overissuance budgets covering the overissuance period (Exhibit C). The Department calculated Petitioner and Petitioner's LTP's self-employment income using tax documents (Exhibits D and F). As stated above, the amount of self-employment income before any deductions is called total proceeds. BEM 500, p. 4. The gross amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions. BEM 500, p. 4. Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502 (July 2015 and July 2016), p. 3.

When calculating Petitioner's LTP's income for 2015 and 2016, the Department took the gross income (\$82,440 for 2015 and \$122,350 for 2016) divided the number by 12 (months in a year) and reduced the monthly amount by 25% (allowable expenses). The Department properly determined Petitioner's LTP had had gross income per month in the amount of \$5,152 for 2015 and \$7,646 for 2016.

Petitioner argued that her LTP's gross income is not as high as the Department's calculation, as the expenses are greater than 25%, which is reflected in the breakdown of the Schedule C forms for both 2015 and 2016. However, BEM 502 specifically states that a client can choose to claim actual expenses, if they are verified. Petitioner acknowledged that she never submitted verifications of her LTP's actual self-employment expenses. Additionally, the Department testified that many of the expenses listed on the Schedule Cs are not "allowable" expenses set forth in BEM 502. Therefore, the Department properly reduced the figures by 25%.

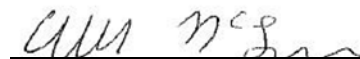
Because all FAP applicants and recipients are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS), the monthly categorical income limit (200% of the poverty level), from RFT 250, column D (October 2016), p. 1, applies as the standard for FAP gross income eligibility. BEM 213 (January 2016), pp. 1-2. For a five-person FAP group, the applicable 200% gross income limit was \$4,652 (effective October 1, 2014) and \$4,740 (effective October 1, 2016). As Petitioner's LTP's gross income alone was \$5,152 for 2015 and \$7,646 in 2016, the gross income limit for FAP eligibility was exceeded during the entire overissuance period. Thus, Petitioner was not entitled to FAP benefits during the entire overissuance period.

The Department presented Petitioner's Benefit Summary Inquiry showing that she was issued \$9,702 during the overissuance period. As Petitioner was not entitled to benefits during the overissuance period, the Department properly determined that Petitioner received and Overissuance of FAP benefits in the amount of \$9,702.

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 FAP benefits in the amount of \$9,702 for the period of July 1, 2015 through December 31, 2016. Accordingly, the Department's decision is **AFFIRMED**.

EM/cg



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

Via Email:

MDHHS-Antrim-Hearings
M. Holden
D. Sweeney
BSC1-Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

