



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: June 12, 2018  
MAHS Docket No.: 18-004068  
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 June 11, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by 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 between October 1, 2015 through February 29, 2016.
2. On [REDACTED], 2015, Petitioner submitted a redetermination regarding her FAP benefits in which she reported no earned income (Exhibit A). Petitioner's benefit period ended September 30, 2018.
3. On September 24, 2018, Petitioner submitted notification to the Department stating she had returned to work (Exhibit B).
4. On [REDACTED], 2018, an interview was conducted with Petitioner in which she reported she had returned to work.

5. On September 28, 2018, a new FAP benefit period was certified for Petitioner and the Department sent her a Notice of Case Action (Exhibit D).
6. On March 16, 2018, the Department sent Petitioner a Notice of Overissuance informing her that she had been overissued FAP benefits during the eriod of October 1, 2015 through February 29, 2016 in the amount of \$1,516.
7. On April 20, 2018, 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 FAP benefit case was under review in [REDACTED] 2015. On [REDACTED], 2015, Petitioner submitted a redetermination stating she had no earned income. However, on September 24, 2018, Petitioner submitted notification that she had returned to work. Additionally, on [REDACTED], 2018, an interview was conducted with Petitioner in which she stated she had returned to work. Petitioner's new FAP benefit period was certified on [REDACTED], 2015. Despite the information provided by Petitioner, the Department did not include any earned income in Petitioner's FAP budget for October 1, 2015, ongoing (Exhibit D). As a result, the Department determined Petitioner was overissued FAP \$1,516 in FAP benefits for the period of October 1, 2015 through February 29, 2016.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2015), p. 1. 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 (October 2015), 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.

The Department presented the redetermination submitted by Petitioner on [REDACTED], 2015. Petitioner indicated she did not have any earned income, as she was not

employed at the time. The Department also presented documentation submitted by Petitioner on September 24, 2015, in which she reported she had returned to work. The Department submitted case comments from an interview that was held with Petitioner on [REDACTED], 2015, in which she reported returning to work. Additionally, the Department submitted a Notice of Case Action sent to Petitioner on September 28, 2015, which showed that no earned income was budgeted when calculating Petitioner's FAP benefit amount for October 1, 2015, ongoing. As such, the Department established that Petitioner was overissued FAP benefits as a result of Agency error.

The Department presented Petitioner's Benefit Summary, which showed she was issued \$1,982 in FAP benefits for the period of October 2015 through February 2016. The Department presented overissuance budgets for the period October 2015 through February 2016. The Department recalculated Petitioner's FAP benefits by adding in Petitioner's earned income during the overissuance period that it retrieved from a Wage Verification (Exhibit E). The budgets show that for the period of October 2015 through February 2016, Petitioner should have only received \$466 in FAP benefits. The Department determined the overissuance amount was \$1,516.

To determine the first month of the overissuance period for changes reported timely and not acted on, the Department allows time for: (i) the standard of promptness for change processing per BAM 220; and (ii) the full negative action suspense period per BAM 220. BAM 705 p. 5. For non-income changes, the Department will complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs 10 days after the change is reported. BAM 22 (October 2015), p. 10. For income increases that result in a benefit decrease, action must be taken and notice issued to the client within the Standard of Promptness (FAP - 10 calendar days, FIP/SDA - 15 workdays). BEM 505 (July 2015), p. 11. The effective month is the first full month that begins after the negative action effective date. BEM 505, p. 11.

The Department testified that it began the overissuance period on October 1, 2015, as opposed to November 1, 2015, because Petitioner's new FAP benefit period began on October 1, 2015. Petitioner's previous FAP benefit period ended September 30, 2018 and her case was under review at the time the change was reported. The Department certified a new FAP benefit period on [REDACTED], 2015, after the interview was completed. The Department stated that had Petitioner's income been properly budgeted, the change would have begun on October 1, 2015.

Policy specifically states that the overissuance period allows time for the standard of promptness for a change and the full negative action suspense period, as stated above. Policy regarding overissuance periods does not provide for any exceptions for changes processed within a benefit recertification. Therefore, the Department erred when it included October 2015 in the overissuance period. According to the budgets, Petitioner was overissued FAP benefits in the amount of \$291 in October 2015. Thus, the Department is not entitled to recoup the \$291 in FAP benefits issued in October 2015. Accordingly, the Department established it is entitled to recoup/collect \$1,225 in overissued FAP benefits during the period of November 2015 through February 2016.

At the hearing, Petitioner also argued that the Department improperly included her child support income in her budgets. Petitioner alleged that her child support payments stopped prior to October 2015. According to the budgets provided, unearned income in the form of child support was included in Petitioner's FAP budgets. The Department testified it reviewed Petitioner's case file and could not find any evidence of the reported change in income. Petitioner testified she could not specifically recall reporting the change to the Department, but that she is generally very diligent about reporting changes and believes that she would have timely reported the change.

Petitioner did not provide sufficient evidence that she timely reported the change in child support income. Therefore, the Department acted in accordance with policy when it did not remove the child support income from the overissuance budgets.

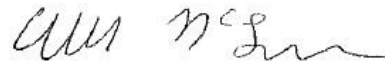
### **DECISION AND ORDER**

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. The Department did not act in accordance with policy when it determined the amount of the overissuance.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner being overissued FAP benefits and **REVERSED IN PART** with respect to the amount of the overissuance. The overissued amount is modified to \$1,225.

The Department is **ORDERED** to initiate recoupment and/or collection procedures for the amount of \$1,225, less any previously recouped/collected amounts, in accordance with Department policy.

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**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) 763-0155; 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-Hillsdale- Hearings  
MDHHS-Recoupment-Hearings  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MAHS

**Petitioner – Via First-Class Mail:**

