



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 18, 2018
MAHS Docket No.: 18-004702-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

ORDER GRANTING REQUEST FOR RECONSIDERATION
AND
DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the request for rehearing and/or reconsideration by Respondent, the Department of Health and Human Services (Department), of the Hearing Decision issued by the assigned Administrative Law Judge (ALJ), Amanda Marler, at the conclusion of the hearing conducted on June 13, 2018, and mailed on June 13, 2018, in the above-captioned matter. In the Hearing Decision, ALJ Marler found that the Department had established that Petitioner, [REDACTED] received an overissuance of Food Assistance Program(FAP) benefits totaling only \$357, a reduction of the \$1,428 FAP overissuance alleged by the Department.

On June 19, 2018, the Department submitted a request for reconsideration. The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application, and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. A rehearing is a full hearing which may be granted if the original hearing record is inadequate for purposes of judicial review or there is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision. A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing and may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties is able to demonstrate that the Administrative Law Judge misapplied manual policy or law in the hearing decision, which led to the wrong decision; issued a Hearing Decision with typographical errors, mathematical errors, or

other obvious errors that affect the substantial rights of the petitioner; or failed to address other relevant issues in the hearing decision.

In its request for reconsideration, the Department alleges that ALJ Marler misapplied Department policy under BEM 213 (January 2016) when she concluded that the Department erroneously applied the 130% gross income limit in determining Petitioner's gross income eligibility for FAP. Because the Department alleges a misapplication of policy and has identified the policy at issue, a basis for reconsideration is established. Therefore, the Department's request for reconsideration is GRANTED.

The Decision and Order of Reconsideration follows a full review of the case file, all exhibits, the hearing record and applicable statutory and policy provisions.

DECISION AND ORDER OF RECONSIDERATION

ISSUE

Did the ALJ err in concluding that the Department established that Petitioner received an overissuance in FAP benefits totaling \$357 for December 1, 2016 through March 31, 2017 due to agency error rather than the \$1,428 alleged by the Department?

FINDINGS OF FACT

The undersigned Administrative Law Manager, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On June 13, 2018, a hearing was held in the above-captioned matter.
2. The Department alleged that, due to agency error, it had failed to properly budget Petitioner's income between December 1, 2016 and March 31, 2017, and, as a result, Petitioner received \$1,428 in FAP benefits she was ineligible to receive.
3. On June 13, 2018, ALJ Marler issued a Hearing Decision in the matter, finding that the Department had established only \$357 of the alleged FAP overissuance.
4. The Findings of Fact numbers 1 through 10 in the Hearing Decision are incorporated by reference.
5. On June 19, 2018, the Michigan Administrative Hearing System (MAHS) received the Department's timely request for reconsideration, which is granted herein.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Reference Tables Manual (RFT), and 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.

The Department alleged that Petitioner received a FAP overissuance totaling \$1,428 from December 1, 2016 to March 31, 2017 because it had failed to process income Petitioner had reported. When a client group receives more benefits than entitled to receive, whether due to client error or Department error, the Department must attempt to recoup the overissuance. BAM 700 (January 2018), p. 1. The amount of a FAP overissuance is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 705 (January 2016), p. 6.

In support of its case that Petitioner received a \$1,428 FAP overissuance, the Department presented FAP overissuance budgets for each month during the fraud period that it alleged an overissuance showing what Petitioner would have been eligible to receive if her earned and unearned income had been properly budgeted in the calculation of her FAP eligibility and allotment from December 2016 to March 2017. In each monthly budget presented for December 2016 to March 2017, the Department concluded that Petitioner's gross income exceeded the gross income limit for eligibility and, consequently, Petitioner was not eligible for any of the \$1,428 issued to her during this period.

ALJ Marler concluded that, because Petitioner was eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS), under BEM 213 (January 2016), p. 1, she was categorically eligible for FAP, and the Department should have applied the 200% gross income limit for the two-person FAP group, or \$2,670. See RFT 250 (October 2016), p. 1. ALJ Marler found that, when the 200% gross income limit is applied, Petitioner's gross monthly income exceeded the \$2,670 gross income limit for FAP eligibility for December 2016 only. Because Petitioner's gross income for the remaining months did not exceed the 200% gross income limit, ALJ Marler concluded that the Department had established a FAP overissuance totaling only \$357, the amount of FAP benefits she was issued, but ineligible to receive, in December 2016.

In its request for reconsideration, the Department alleges that ALJ Marler misapplied policy in concluding that Petitioner was eligible for the 200% gross income limit. While the 200% gross income limit applies to all categorically eligible FAP applicants and

recipients, a group is **not** categorically eligible for FAP (i) if any member of the group is FAP-disqualified for intentional program violation (IPV) or drug-related felony or (ii) the head of household is disqualified for employment-related activity. BEM 213, p. 2. If a group is not categorically eligible for FAP, its gross income cannot exceed 130% of the federal poverty limit for the applicable group size. BEM 213, pp. 1-2; RFT 250, p. 1.

In this case, Petitioner had a lifetime IPV disqualification. Therefore, her group was not categorically eligible for DVPS status. As such, the gross income limit applicable to her group was equal to 130% of the federal poverty limit, rather than 200% of the federal poverty level. Because Petitioner was disqualified from the FAP group due to the IPV sanction, her FAP group consisted of her two children. For her two-person FAP group, the applicable 130% gross income limit for FAP eligibility for the period at issue was \$1,736. RFT 250, p. 1, fn A and D. When the correct gross income limit is applied to Petitioner's case, the FAP overissuance budgets establish that, when Petitioner's income for January 2017 and February 2017 is included in the calculation of her FAP eligibility, Petitioner's household's gross income exceeds her group's gross income limit for FAP eligibility. Thus, Petitioner was not eligible for any of the FAP benefits issued to her from January 2017 and February 2017. These benefits total \$714.

With respect to December 2016, ALJ Marler concluded that the Department had established a FAP overissuance because, when Petitioner's employment income was considered in the calculation of her FAP eligibility, her household's income exceeded even the 200% gross income limit. In coming to this conclusion, ALJ Marler concluded that, because Petitioner reported in a semi-annual contact report she submitted to the Department on October 10, 2016 that her income had increased by more than \$100 over what the Department had been budgeting, the Department properly began the FAP overissuance period in December 2016 after taking into consideration the processing time and negative action period. The December 2016 budget included Petitioner's employment income from [REDACTED]. However, because Petitioner began employment with [REDACTED] on November 4, 2016 and received her first paycheck on November 10, 2016 (Exhibit A, p. 31), this employment income should not have been included in the December 2016 budget. See BAM 220 (January 2017), p. 7; BAM 705, pp. 5-6 (requiring that the overissuance period take into consideration the ten days to report a change from the date of receipt of a paycheck, the ten days for processing, and the 12-day negative action period). As noted in the Hearing Decision, the Department failed to provide any verification to support the amount of the child support being used in the December 2016 budget. Petitioner's remaining income, consisting of biweekly unemployment benefits of \$724, which result in monthly converted income of \$1,556, does not exceed the \$1,736 gross income limit. Therefore, the Department failed to satisfy its burden of showing that Petitioner was ineligible for FAP benefits in December 2016. Therefore, the Department is not eligible to recoup and/or collect the \$357 in alleged FAP overissuance for December 2016.

Similarly, with respect to March 2017, because Petitioner had a lapse in employment and did not begin her new employment with [REDACTED] until February 27, 2017

(Exhibit A, pp. 37-38), she had ten days to report the receipt of her first paycheck on March 17, 2017 and there was a ten-day processing period and twelve day negative action period that would apply to her case. As a result, her employment income should not have been included in the March 2017 budget. See BAM 220, p. 7; BAM 705, pp. 5-6. Because Petitioner's employment income from [REDACTED] is included in the March 2017 FAP overissuance budget, the Department has failed to establish the \$357 overissuance it alleges for March 2017.

Thus, the Department established that Petitioner was overissued \$714 in FAP benefits, the total she was overissued in January 2017 and February 2017.

DECISION AND ORDER

Based on the above Findings of Fact and Conclusions of Law, Petitioner was overissued \$741 in FAP benefits that the Department was entitled to recoup and/or collect.

Accordingly, the June 13, 2018 Hearing Decision is **REVERSED**.

The Department is ORDERED to begin recoupment and/or collection of a \$741 FAP overissuance from Petitioner, less any amounts already recouped and/or collected, in accordance with Department policy.



AE/tm

Alice C. Elkin
Supervising 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.

DHHS

Carisa Drake
190 East Michigan
Battle Creek, MI
49016

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: FAP: M. Holden; D. Sweeney