



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 6, 2018
MAHS Docket No.: 18-007789
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: John Markey

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 August 30, 2018, from Lansing, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Dawn McKay, Recoupment Specialist, and Kim Kilmer, Hearings Coordinator. During the hearing, 62 pages of documents were offered and admitted as Exhibit A, pp. 1-62.

ISSUE

Did Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup and/or collect?

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 a recipient of FAP benefits from the Department.
2. In October of 2017, Petitioner submitted to the Department a completed New Hire Employment Report informing the Department that she was working at ██████████ starting August 11, 2017. Included in the submission was an assertion by Petitioner that she would be working 45-50 hours per week at \$██████ per hour. Exhibit A, pp. 37-38.

3. The Department failed to take into consideration Petitioner's reported income change and continued to issue Petitioner FAP benefits based on a budget that did not include the income.
4. Each month from October of 2017 through April of 2018, the Department issued Petitioner \$760 of FAP benefits based on a monthly income of zero.
5. On June 20, 2018, the Department issued to Petitioner a Notice of Overissuance alleging that Petitioner received an OI of FAP benefits in the amount of \$1,736 from October of 2017 through April of 2018 due to agency error. Exhibit A, pp. 58-59.
6. On [REDACTED] 2018, Petitioner filed a request for hearing objecting to the Department's demand that Petitioner repay the Department.

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 is seeking to recoup an alleged \$1,736 OI of FAP benefits issued to Petitioner. The Department concedes that the OI was caused by the Department's error. The Department now seeks to recoup and/or collect that amount from Petitioner.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance (OI). BAM 700 (January 2018), p. 1. An OI is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700, p. 1. An agency error OI is caused by incorrect action (including delayed or no action) by the Department. BAM 705 (January 2016), p. 1. Recoupment of OIs caused by agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 705, p. 1. However, if the OI amount is \$250 or higher, the Department must attempt to recoup the OI amount. BAM 700, p. 1.

In this case, Petitioner received \$760 of FAP benefits each month from October of 2017 through April of 2018. When calculating Petitioner's FAP benefit amount, the Department did not include Petitioner's reported wages from [REDACTED]

Resort, despite Petitioner informing the Department that Petitioner would be working on a regular basis there during the entire period. The Department's failure to include Petitioner's income into the budget resulted in the Department overissuing FAP benefits to Petitioner. During the hearing, the Department presented sufficient evidence to conclude that the amount of the OI was \$1,736. Petitioner conceded that she was overissued that amount.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish a FAP benefit OI to Respondent totaling \$1,736 due to Department error.

Petitioner expressed frustration that she is required to pay back money that resulted from an error that was not her fault. Petitioner explained that paying back the money would put her in difficult financial circumstances. Petitioner's frustration is understandable, but Department policy is clear that overissuances over \$250 that resulted from agency error can be recouped. BAM 705, p. 1.

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

The Department is **ORDERED** to initiate collection procedures for a \$1,736 OI, less any amounts already recouped or collected, in accordance with Department policy.



JM/dh

John Markey
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

DHHS

Kimberly Kilmer
800 Watertower
Big Rapids, MI
49307

Mecosta County, DHHS

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

DHHS Department Rep.

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

Petitioner

[REDACTED]
[REDACTED]
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[REDACTED]