



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 21, 2018
MAHS Docket No.: 18-008404
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 September 19, 2018, from Lansing, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Walita Randle, Recoupment Specialist. During the hearing, a 45-page packet of documents was offered and admitted as Exhibit A, pp. 1-45.

ISSUE

Did Petitioner receive an overissuance of Food Assistance Program (FAP) benefits from November 1, 2017, through February 28, 2018, that the Department is entitled to recoup?

Did Petitioner receive an overissuance of FAP benefits from April 1, 2018 through May 31, 2018 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 [REDACTED], 2017, Petitioner filed an application for FAP benefits. Exhibit A, pp. 27-40.

2. On the application section titled "School Enrollment Information," Petitioner informed the Department that he was enrolled "Half time" in school. Exhibit A, p. 37.
3. On or about November 17, 2017, Petitioner was interviewed by a worker from the Department. According to the worker's notes regarding the conversation, Petitioner was enrolled part-time at a program through [REDACTED] for six credits. Exhibit A, p. 10.
4. Based on a review of Petitioner's situation, the Department approved and dispensed to Petitioner FAP benefits of \$89 for the remaining days of November of 2017 and \$192 per month from December of 2017 through May of 2018. Exhibit A, pp. 4, 17.
5. On or about February 2, 2018, Petitioner began working over 20 hours per week at [REDACTED] for most of the weeks from that date through the end of May of 2018. Exhibit A, pp. 24-26.
6. Petitioner never reported to the Department the income from his employment with [REDACTED]. As a result, the Department did not budget his increase in income into the FAP benefits calculation, resulting in Petitioner being overissued benefits for the months of at least April and May of 2018. Exhibit A, pp. 18-22.
7. On July 3, 2018, the Department issued to Petitioner a Notice of Overissuance informing Petitioner that the Department believed that it overissued Petitioner \$665 in FAP benefits from November 1, 2017, through February 28, 2018, based on an Agency Error. The explanation provided was that Petitioner was "enrolled half time at [REDACTED] with no income and was issued benefits." Exhibit A, pp. 3-7.
8. The Department issued another July 3, 2018, Notice of Overissuance to Petitioner covering the time period from April 1, 2018, through May 31, 2018. For that time period, the Department found that Petitioner was overissued benefits based on a Client Error in the amount of \$352. The explanation was that Petitioner "failed to report employment with [REDACTED]" Exhibit A, pp. 11-15.
9. On [REDACTED] 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, the Department is attempting to establish an overissuance of FAP benefits after reviewing Petitioner's case and concluding that Petitioner was not entitled to most of the benefits he received from November of 2017 through May of 2018. Petitioner objects to the Department's attempt to collect the alleged overissuance.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 1, 2018), p. 1. An agency error is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 4. 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. 7. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705 (January 1, 2016), p. 6.

AGENCY ERROR OVERISSUANCE

From November 1, 2017, through February 28, 2018, Petitioner was issued \$665 in FAP benefits. The Department subsequently did a review of Petitioner's case and concluded that Petitioner should have been held ineligible at the time of application due to Petitioner's report that he attended schooling half time. The Department believes that its failure to hold Petitioner ineligible resulted in the Department erroneously issuing Petitioner \$665 in FAP benefits from November of 2017 through February of 2018.

An individual who is enrolled at least half-time in an institution of higher education is considered in student status and shall be ineligible for FAP benefits unless that person meets certain exemptions, none of which are applicable to Petitioner's situation for the time period from November of 2017 through February of 2018. 7 CFR 273.5(a) and (b); BEM 245 (October 1, 2017), pp. 5-6. Department policy states that a "person remains in student status while attending classes regularly.... Student status does not continue if the student...does not intend to register for the next school term." BEM 245, p. 5.

On the application Petitioner submitted on [REDACTED], 2018, he reported to the Department that he was going to school half time. In a follow up interview with the Department either that same day or within a couple of days thereafter, Petitioner provided more information about his schooling. According to the case notes taken by the Department worker who conducted the interview, Petitioner was only enrolled part time, which is less than half time. Thus, Petitioner's benefits were approved as he was not in student status.

The Department believes that Petitioner should have been in student status as of that date and had his application denied. However, based upon the record presented at hearing, Petitioner clearly was not in student status at any time on or after November 17, 2017. Rather, Petitioner's schooling was a vocational course taken through a program affiliated with [REDACTED] that was scheduled for the spring of 2017. Petitioner stopped attending the courses and did no coursework after May of 2017. From May of 2017 through present, Petitioner has not been "attending classes regularly" nor does he "intend to register for the next school term." BEM 245, p. 5. Petitioner, if he entered student status at some time in spring of 2017 due to the classes he signed up for, which is debatable, was most certainly no longer in student status at any time from November of 2017 through February of 2018.

The Department's allegation of an overissuance of FAP benefits from November 1, 2017, through February 28, 2018, is premised upon Department's erroneous conclusion that Petitioner was in student status that entire time. Because Petitioner was not in fact in student status during that time, the Department's overissuance must be set aside. The Department has not met its burden of proving that Petitioner was overissued FAP benefits for the time period from November 1, 2017, through February 28, 2018.

CLIENT ERROR OVERISSUANCE

From April 1, 2018, through May 31, 2018, Petitioner was issued \$384 in FAP benefits. The Department's review resulted in an allegation of an overissuance of \$352 during those months for a Client Error based on Petitioner's failure to report income with [REDACTED] [REDACTED]

Petitioner received \$192 of FAP benefits for each of the two months. At no point during the period Petitioner was collecting FAP benefits did Petitioner inform the Department that he had obtained a job with [REDACTED] [REDACTED]. Thus, when calculating Petitioner's FAP benefit amount, the Department did not include any of Petitioner's wages from [REDACTED]. The inclusion of that wage information into the FAP budget results in a substantial reduction in Petitioner's monthly allotment for April and May of 2018. Petitioner's failure to provide the Department with wage information 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 \$352.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish a FAP benefit overissuance for the months of April and May of 2018 to Respondent totaling \$352 due to Client Error.

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 \$352 during the period of April 1, 2018, through May 31, 2018. Accordingly, the Department's decision in that respect is **AFFIRMED**.

However, the Department did not act in accordance with Department policy when it determined Petitioner was overissued FAP benefits in the amount of \$665 during the period of November 1, 2017, through February 28, 2018. Accordingly, the Department's decision in that respect is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Delete from Petitioner's case the alleged overissuance covering FAP benefits Petitioner received from November 1, 2017 through February 28, 2018.

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 Department Rep.

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

DHHS

Renee Olian
322 Stockbridge
Kalamazoo, MI 49001

Kalamazoo County, DHHS

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

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