



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: November 29, 2018
MAHS Docket No.: 18-010750
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 November 19, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Dawn McKay, Recoupment Specialist, who participated via three-way telephone conference. Kim Kilmer, Assistance Payment Supervisor and Hearing Coordinator, was present in the hearing room as a room monitor but did not participate in the hearing.

ISSUE

Did the Department properly conclude that, due to agency error, Petitioner was overissued \$2,822 in Food Assistance Program (FAP) benefits from January 2016 to November 2016 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. On ██████████, 2016, Petitioner applied for FAP benefits.
2. In her application, Petitioner stated that her three minor children lived in her home eight days per month.
3. At the time of application, Petitioner was employed at ██████████ (Employer 1).

4. The Department processed Petitioner's application based on a FAP group size of four and approved her for benefits.
5. In April 2016, Petitioner notified the Department that [REDACTED] had moved into her home with her. She included him as a household member in the Semi-Annual Contact Report she submitted to the Department on May 16, 2016 (Exhibit A, pp. 18-19).
6. Mr. Shannon was employed with Employer 1.
7. The Department failed to add [REDACTED] to the FAP group or to budget his employment income from Employer 1.
8. In August 2016, Petitioner ended her employment with Employer 1.
9. On September 2, 2016, Petitioner received her first paycheck from new employment with a day care center (Employer 2).
10. On September 28, 2018, the Department sent Petitioner a Notice of Overissuance notifying her that it had overissued \$2,822 in FAP benefits to her from January 1, 2016 to November 30, 2016 due to agency error (Exhibit A, pp. 58-62).
11. On [REDACTED] 2018, the Department received Petitioner's request for hearing disputing the overissuance.

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 alleges that Petitioner was overissued \$2,822 in FAP benefits due to its error in (1) improperly including Petitioner's three children in her FAP group and (2) failing to add [REDACTED] and his income in the FAP budget.

An individual's FAP group includes parents and their children under age 22 who live together. BEM 212, p. 1. When a child spends time with multiple caretakers who do not live together, the child is included in the FAP group of the primary caretaker. BEM 212 (October 2015, p. 3). The primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212, p. 2. The parent who is not the primary caretaker may be eligible for FAP for the child when the child is visiting for more than 30 days. BEM 212, pp. 3-4.

In her [REDACTED], 2016 application, Petitioner indicated that she had three minor children that lived with her eight days each month (Exhibit A, pp. 8-10). Because Petitioner's children did not live with her for more than half the days in a calendar month, she was not the children's primary caretaker as defined under Department policy. Even though Petitioner testified that the children were with her for two-week periods each month in the summer, they were not in her household for more than a 30-day period and, when their time in Petitioner's home is averaged over the course of the year, they did not reside an average of more than half their time with Petitioner. Thus, the Department improperly included Petitioner's children in her FAP group.

A FAP group also includes individuals who live together and purchase and prepare food together. BEM 212 (October 2015), p. 1. Petitioner reported [REDACTED] in her household and also reported that they purchased and prepared food together in the Semi-Annual Contact Report she submitted to the Department. Therefore, [REDACTED] was a member of her FAP group. With limited exceptions, the income of all group members is considered in calculating FAP eligibility and benefit amounts. BEM 550 (October 2015), pp. 1-4; BEM 556 (July 2013), p. 2. Therefore, the Department erred when it failed to add [REDACTED] to Petitioner's FAP group and include his income in the calculation of Petitioner's FAP budget and FAP eligibility.

The Department alleges that, because it improperly calculated Petitioner's FAP group size from January 2016 and November 2016 and failed to include [REDACTED] income for June 2016 to November 2016 in the calculation of Petitioner's FAP budget, Petitioner received \$2,822 in FAP benefits she was ineligible to receive between January 2016 and November 2016. Even though the alleged overissuance was due to the Department's error, when an individual receives more FAP benefits than entitled, the Department must nevertheless attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. The amount of the overissuance is the amount of benefits issued to the FAP group in excess of what it was eligible to receive. BAM 700, p. 1.

In support of its allegations, the Department presented FAP overissuance budgets showing the FAP amount Petitioner would have been eligible to receive if the FAP budgets between January 2016 and November 2016 (1) showed the correct number of FAP group members, which would have been one for January 2016 to May 2016 and two for June 2016 to November 2016 when [REDACTED] was added to the group, (2) included [REDACTED] income when he was added to the group beginning June 2016,

and (3) showed Petitioner's actual employment income from Employer 1 for January 2016 to August 2016 and from Employer 2 for November 2016 and her child support expenses during that period.

A review of the FAP overissuance budgets shows that the Department considered Petitioner and [REDACTED] actual income from Employer 1, as shown by the Work Number, the Department-accessible database in which employers voluntarily report individuals' income information, and actual child support as shown on the consolidated inquiry (Exhibit A, pp. 22-24, 33-34). The FAP overissuance budgets show that Petitioner's last pay from Employer 1 was in August 2016. Because Petitioner received her first pay from Employer 2 on September 2, 2016, the Department properly did not begin to budget this income until November 2016. BAM 705 (January 2016), pp. 5-6. A review of the budgets shows that all of the employment income was properly calculated. Based on the household's gross income, Petitioner had excess gross income from April 2016 through July 2016 and was not eligible for any of the FAP benefits she received those months. See RFT 250 (October 2015), p. 1.

For the remaining months between January 2016 and November 2016, the Department contended that Petitioner had excess net income. An individual with household net income in excess of the FAP net income limit is not eligible for FAP. BEM 550 (October 2015), p. 1. The Department testified that, in determining net income, it had changed no figures on the FAP overissuance budgets other than the income and child support. Because Petitioner reported her and [REDACTED] income, the Department properly included a 20% earned income deduction in the calculation of the household's net income. BEM 550 (October 2015), p. 1. At the hearing Petitioner argued that she had reported a change in rent when [REDACTED] moved into her household. Housing expenses are considered in the calculation of a household's FAP net income. BEM 554 (June 2016), p. 1. On the record, the Department acknowledged receiving a new lease showing the Petitioner's rent had gone up to \$533 effective April 1, 2016. The lease on October 4, 2016 was in response to a September 21, 2016 verification checklist.

Changes may be reported in person, by mail or by telephone. BAM 105 (October 2016), p. 12. Based on the Department's failure to properly process the other changes Petitioner reported, Petitioner's testimony that she reported her rent increase to the Department at the time [REDACTED] moved into her home is credible. Therefore, when [REDACTED] was added to Petitioner's FAP group beginning June 2016, the Department should also have considered the increased rent amount. As discussed above, Petitioner's household's gross income exceeded the gross income limit for a two-person group in June and July 2016. RFT 250 (October 2016), p. 1. Because rent expenses are not considerations in the calculation of gross income, the failure to process the rent change is not relevant for June and July 2016. However, the rent expense was relevant in the calculation of the FAP overissuance for August 2016 through November 2016, when Petitioner was determined to be eligible for FAP benefits based on her household's net income, but for a lesser amount than she received those months. Because the Department did not use the correct rent amount, it failed to satisfy

its burden of showing that it properly calculated the FAP overissuance for August 2016 through November 2016.

A review of the net income budgets from January to March 2016 shows that the Department properly calculated the FAP overissuance Petitioner received those months based on her net income and corrected group size. The FAP overissuance for those months, plus the overissuance for April to July 2016, totals \$1,605.

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 calculated Petitioner's FAP overissuance for January 2016 through July 2016 but did not act in accordance with Department policy when it calculated the FAP overissuance for August 2016 through November 2016.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the determination that Petitioner was overissued \$1,605 in FAP benefits for January 2016 to July 2016 and **REVERSED IN PART** with respect to the determination that Petitioner was overissued \$1,217 for August 2016 through November 2016.

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. Reduce the FAP overissuance to Petitioner to \$1,605 for the period January 2016 to July 2016; and
2. Commence recoupment and/or collection of the \$1,605 FAP overissuance in accordance with Department policy.

AE/tm



Alice C. Elkin

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
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DHHS Department Rep.

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235 S Grand Ave
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Petitioner

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

cc: FAP: M. Holden; D. Sweeney
AP Specialist (Mecosta-3)