



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 26, 2019
MOAHR Docket No.: 19-002967
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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; 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 via 3-way telephone conference on April 22, 2019, from Detroit, Michigan. The Department of Health and Human Services (Department) was represented by Kurt Sperry, Recoupment Specialist, and Jessica Kirchmeier, Hearings Coordinator at the Department's local office in Eaton. Petitioner appeared at the local office and represented herself. [REDACTED], Petitioner's aunt, participated as her witness.

ISSUE

Did Petitioner receive an over-issuance (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 applied for FAP benefits on [REDACTED] 2014 (Exhibit A, pp. 2-25).
2. On January 14, 2015, the Department sent Petitioner a Notice of Case Action notifying Petitioner that she was approved for FAP benefits for a 2-person household based on \$0 of earned income. A change report form was included with the Notice, advising Petitioner to report household changes, including income, within 10 days (Exhibit A, pp. 26-31).

3. Petitioner began employment with [REDACTED] (Employer) on February 4, 2015 and received her first paycheck on March 4, 2015 (Exhibit A, pp. 39-40).
4. The Department became aware of the employment through a data cross-match and on October 26, 2015 sent Petitioner a Wage Match Client Notice (Exhibit A, pp. 35-38).
5. On January 16, 2019, the Department sent Petitioner a Notice of Overissuance notifying her that she received a FAP over-issuance of \$1,860 from May 1, 2015 to November 30, 2015. The notice explained that the over-issuance was due to client error because Petitioner failed to timely report her income from Employer (Exhibit A, pp. 57-62).
6. On [REDACTED], 2019, the Department received Petitioner's request for her 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.

The Department alleges that Petitioner received more FAP benefits than she was eligible to receive from May 1, 2015 to November 30, 2015 because she failed to report her employment with Employer in a timely manner and, as a result, this income was not budgeted in calculating her FAP eligibility and allotment amount those months.

If an individual receives an overpayment of FAP benefits in excess of \$250, the Department must establish and collect the resulting recipient claim. 7 CFR 273.18; BAM 700 (October 2018), pp. 1, 10. The amount of the overpayment is the benefit amount the group actually received minus the amount the group was eligible to receive. 7 CFR 273.18(c)(1); BAM 715 (October 2017), p. 6; BAM 705 (October 2018), p. 6.

The Department characterized the FAP overpayment to Petitioner as a client error. An overpayment due to client error occurs when the client received more benefits than entitled because the client gave incorrect or incomplete information to the Department.

BAM 715, p. 1. In contrast, an agency error is caused by incorrect actions (including delayed or no action) by the Department and includes information not being shared between Department divisions. BAM 705, p. 1.

Department policy requires that clients report changes in circumstances, including employment, that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105 (January 2019), p. 12. Here, Petitioner did not report her employment with Employer. The Department became aware of the income through an exchange of employment data with the Michigan Talent Investment Agency, as evidenced by the Wage Match Client Notice it sent Petitioner on October 26, 2015 (Exhibit A, pp. 35-38). See BAM 802 (July 2018), pp. 1, 2; BAM 800 (January 2018), p. 3. Because Petitioner did not timely report her employment income, any overpayment to Petitioner that resulted was due to client error.

In the Notice of Overissuance, the Department alleged that Petitioner had received an overpayment of \$1,860 in FAP benefits from May 1, 2015 to November 30, 2015. At the hearing, the Department acknowledged that it had erred in its calculation of the overpayment for May 2015 and June 2015 and, when this error was corrected, the overpayment was reduced to \$1,577. The Department testified that it notified Petitioner of the reduced overpayment amount. At the hearing, the Department presented FAP overissuance budgets for each month between May 2015 and November 2015 showing the benefits Petitioner was eligible to receive if her employment income had been included in the calculation of her FAP eligibility and allotment during each month at issue.

Because Petitioner received her first paycheck from Employer on March 5, 2015, the Department properly began the overissuance period in May 2015. BAM 105, p. 10; BAM 720, p. 7. A review of the FAP overissuance budgets presented shows that, for May 2015 and June 2015, because Employer provided only quarterly income for Petitioner for those months and Petitioner did not respond with any other verification such as paystubs, the Department properly considered the monthly average income for that quarter for those months. BAM 715 (October 2017), p. 8; BAM 802 (July 2018), p. 3). A review of the FAP OI budgets for the remaining months shows that the Department properly considered Petitioner's actual income from employment. BAM 700, p. 8.

The Department explained that none of the other deductions to income in the FAP overissuance budgets were changed from those in the original issuance budgets, other than those affected by the income. Further, because Petitioner did not timely report her employment income, she was not eligible for the 20% earned income deduction in the calculation of the household's net income. 7 CFR 273.18(c)(1); BAM 720, p. 10.

A review of budgets shows that, when Petitioner's income from employment at Employer is taken into consideration, based on her two-person FAP group, Petitioner was only eligible for a total of \$922 in FAP benefits between May 2015 and November 2015. RFT 260 (October 2014), pp. 9, 11, 15, 20; RFT 260 (October 2015), pp. 8, 10.

Because she received \$2,499 (Exhibit A, p. 41), she was over-issued \$1,577 in FAP benefits, the difference between the amount she received and the amount she was eligible to receive.

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 that Petitioner was over-issued \$1,577 in FAP benefits from May 1, 2015 to November 30, 2015 and sought to collect that amount.

DECISION AND ORDER

Accordingly, the Department's decision to collect repayment from Petitioner of \$1,577 for overissued FAP benefit from May 1, 2015 to November 30, 2015 is **AFFIRMED**.



AE/tm

Alice C. Elkin

Administrative Law Judge

for Robert Gordon, 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 Office Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office Of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Jessica Kirchmeier
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Petitioner

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

cc: FAP: M. Holden; D. Sweeney
Eaton County AP Specialist (2)