



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: August 30, 2019
MOAHR Docket No.: 19-008156
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 28, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Alisha Young, Recoupment Specialist.

ISSUE

Did Petitioner receive an overissuance of Food Assistance Program (FAP) benefits 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. Petitioner was a recipient of FAP benefits during the period of January 2, 2019 through May 31, 2019 (Exhibit A, p. 71).
2. Petitioner was an ongoing FAP recipient but her FAP benefit case closed effective January 1, 2019, ongoing, for her failure to complete the redetermination process (Exhibit A, pp. 38-43).
3. On [REDACTED] 2019, Petitioner submitted a new application for FAP benefits (Exhibit A, pp. 25-31).

4. On January 2, 2019, Petitioner uploaded an Internal Revenue Service (IRS) U.S. Individual Income Tax Return Form 1040 for the year 2017 and Employee Business Expenses Form 2106 for the year 2017 (Exhibit A, pp. 32-35).
5. On January 4, 2019, the Department sent Petitioner an Appointment Notice stating that she had an interview scheduled on January 11, 2019 (Exhibit A, p. 45).
6. On January 4, 2019, the Department sent Petitioner a Verification Checklist (VCL) requesting verification of her self-employment income (Exhibit A, pp. 46-47). 4
7. On January 14, 2019, Petitioner uploaded an IRS U.S. Individual Income Tax Return Form 1040 for the year 2017 and Employee Business Expenses Form 2106 for the year 2017 (Exhibit A, pp. 57-60).
8. On January 16, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing her that she was eligible for FAP benefits effective January 2, 2019, ongoing (Exhibit A, pp. 63-68).
9. On July 9, 2019, the Department sent Petitioner a Notice of Overissuance informing her that she had been overissued FAP benefits during the period of January 2, 2019 through May 31, 2019, in the amount of \$1,445 (Exhibit A, pp. 85-86).
10. On [REDACTED], 2019, 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, Petitioner submitted an application for FAP benefits on [REDACTED] 2019. On January 4, 2019, the Department sent Petitioner a VCL requesting verification of her self-employment income. Proofs were due on January 14, 2019. Additionally, the Department sent Petitioner an Appointment Notice on January 4, 2019, advising her that an interview was scheduled on January 11, 2019.

When completing an application for FAP benefits, the Department will conduct an interview before approving benefits. BAM 115 (January 2018), p. 21. If the group is ineligible or refuses to cooperate in the application process, the Department will certify a denial. BAM 115, p. 25.

Additionally, verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p. 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. For FAP cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is required. BAM 130 (April 2017), p. 7. Verifications are considered to be timely if received by the date they are due. BAM 130, p. 7. For electronically transmitted verifications (fax, email or Mi Bridges document upload), the date of the transmission is the receipt date. BAM 130, p. 7. Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a Department representative are considered to be received the next business day. BAM 130, p. 7. The Department sends a negative action notice when: the client indicates a refusal to provide a verification OR the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, p. 7.

The Department alleged that Petitioner was overissued FAP benefits as a result of agency error. Specifically, the Department stated that Petitioner did not complete an interview related to her January 2, 2019 FAP application, nor did she submit proper verification of her self-employment income, as required by policy. The Department testified that despite the failure, Petitioner was approved for FAP benefits effective January 2, 2019. The Department testified that Petitioner was overissued FAP benefits during the period of January 2, 2019 through May 31, 2019, in the amount of \$1,445.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. An agency error is caused by incorrect action by the Department staff or department processes. BAM 700, p. 4. 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 2016), p. 6. If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source when determining the correct benefit amount. BAM 705, p. 8.

In support of its argument that Petitioner was overissued FAP benefits as a result of agency error, the Department presented the self-employment verifications submitted by Petitioner on January 2, 2019 (Exhibit A, pp. 32-35) and on January 14, 2019 (Exhibit A, pp. 57-60). The Department highlighted that the documents are illegible. Therefore, Petitioner failed to properly submit verification of her self-employment income.

Additionally, the Department presented case notes from January 11, 2019, which states, "interview already completed, see IG for more info" (Exhibit A, p. 56). The

Department testified that IG stands for Interview Guide. The Department stated that an interview was not completed and there was no IG in Petitioner's Electronic Case File (ECF).

Petitioner testified that she was never advised that her documents were illegible and that she needed to resubmit her proofs. Petitioner stated that she did complete an interview but could not recall the specific date. Petitioner testified that during the interview she answered the Departments questions related to her income.

The Department failed to establish that Petitioner was overissued FAP benefits as a result of her failure to complete an interview. Petitioner's testimony that she completed an interview was credible. Additionally, the Department's own evidence suggests an interview was completed. The Department also failed to establish that Petitioner was overissued FAP benefits as a result of her failure to submit the requested verification of her self-employment income. The Department sends a negative action when the client indicates a refusal to provide a verification OR the time period given has elapsed and the client has not made a reasonable effort to provide it. Petitioner clearly did not indicate a refusal to provide the verification and made a reasonable effort to comply with the requests for information. Therefore, per policy, the Department would not have been able to close Petitioner's FAP benefit case as a result of improper verification. As such, the Department cannot seek an overissuance for Petitioner's failure to submit proper verification of her income. Thus, the Department failed to establish that it properly followed policy when it determined Petitioner was overissued FAP benefits.

DECISION AND ORDER

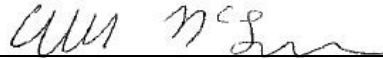
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner was overissued FAP benefits.

Accordingly, the Department's decision 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. Petitioner did not receive an OI of FAP program benefits in the amount of \$1,445.
2. The Department is ORDERED to delete the OI and cease any recoupment and/or collection action.

EM/cg



Ellen McLemore
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 of 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

Via Email:

MDHHS-Jackson-Hearings
MDHHS-Recoupment-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner

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