



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: September 10, 2019
MOAHR Docket No.: 19-008402
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 September 3, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Patty Marx, Family Independence Manager and Dawn McKay, 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 an ongoing FAP recipient during the period of August 1, 2017 through January 31, 2019 (Exhibit A, pp. 32-34).
2. On [REDACTED], 2019, Petitioner completed a redetermination and listed her home address on [REDACTED] in [REDACTED] Michigan (Exhibit A, pp. 4-11).
3. On May 30, 2017, Petitioner sold her home (Exhibit A, pp. 35-37).
4. On [REDACTED] 2019, Petitioner submitted an application for FAP benefits and listed her home address on [REDACTED] in [REDACTED] Michigan (Exhibit A, pp. 12-31).

5. On August 9, 2019, the Department sent Petitioner a Notice of Overissuance informing her that she was overissued FAP benefits in the amount of \$3,188 during the period of August 1, 2017 through January 31, 2019 (Exhibit A, pp. 79-81).
6. 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 completed a redetermination related to her FAP benefit case on [REDACTED] 2017. Petitioner also submitted verification of her monthly mortgage payment of \$853.71 (Exhibit A, p. 86). The Department also testified that Petitioner was responsible for her utilities, entitling her to the heat/utility standard. With the incorporation of the housing expense and the h/u standard, Petitioner was entitled to the full FAP benefit amount for her group size.

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554 (August 2017), p. 13. The expense must be a continuing one. BEM 554, p. 13. The Department will verify shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, the Department will remove the old expense until the new expense is verified. BEM 554, p. 14. To receive the h/u standard, clients must submit proper verification of separate heating or cooling costs. BEM 554, p. 16. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (October 2016), p. 11. Changes in address or shelter cost that result from a move must be reported to the Department within 10 days of the client becoming aware of the change. BAM 105, p. 12.

Petitioner sold her home on May 30, 2017. The Department testified that Petitioner failed to report her change in residence, as required by policy. As a result, Petitioner received an excess shelter deduction for which she was not entitled, resulting in an overissuance of FAP benefits due to client error during the period of August 1, 2017 through January 31, 2019.

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. 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. 6. 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. For client error overissuances due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 720 (January 2016), p. 10.

In support of its contention that Petitioner was overissued FAP benefits due to client error, the Department presented the redetermination completed by Petitioner on [REDACTED], 2017. Petitioner acknowledged that she received the Department publication, "Important Things About Programs & Services," which explained reporting changes in circumstances to the Department, including changes in residence. The Department also submitted documents from the [REDACTED] County Register of Deeds showing Petitioner sold her home on May 30, 2017. The Department testified that Petitioner did not submit notification that she had moved, nor did she provide verification of her new shelter expenses. As such, the Department testified that Petitioner was not entitled to an excess shelter deduction during the period of August 1, 2017 through January 31, 2019. The Department presented overissuance budgets showing the amount of benefits Petitioner should have received with the removal of the excess shelter deduction (Exhibit A, pp. 41-76).

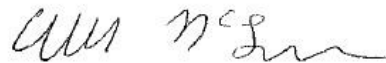
Petitioner testified that she contacted her worker to notify her that she had moved. Petitioner acknowledged that she did not submit written documentation stating that she had moved, nor did she provide verification of her new shelter expenses. Petitioner testified that she believed her FAP benefit case had been closed and that she was not required to submit the documentation.

The Department presented Petitioner's FAP usage history during the period of August 1, 2017 through January 31, 2019 (Exhibit A, pp. 87-93). Petitioner used the FAP benefits that were issued on her behalf. It is evident that Petitioner was aware that she was still receiving FAP benefits. Therefore, Petitioner's testimony that she advised the Department of her relocation was not credible, and the overissuance was a result of client error. The overissuance budgets show Petitioner was overissued FAP benefits in the amount of \$3,188 during the period of August 1, 2017 through January 31, 2019. Therefore, the Department properly established it is entitled to recoup/collect \$3,188 in 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 acted in accordance with Department policy when it determined Petitioner was overissued FAP benefits in the amount of \$3,188 during the period of August 1, 2017 through January 31, 2019. Accordingly, the Department's decision is **AFFIRMED**.

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-Benzie-Hearings
MDHHS-Recoupment
M. Holden
D. Sweeney
BSC2- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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