



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 20, 2019
MOAHR Docket No.: 19-008404
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 18, 2019 from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Juanita Munoz, Hearings Facilitator, and Denise Beard, Recoupment Specialist. During the hearing, a 71-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-71.

ISSUE

Did Petitioner receive a \$1,179 overissuance of Food Assistance Program (FAP) benefits from May 1, 2018 through September 30, 2018 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 was an ongoing recipient of FAP benefits from the Department. Her household consisted of herself, [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. [REDACTED] moved out of the household and was removed from the group, effective July 1, 2018. Exhibit A, p. 26.
2. During the relevant time period, Petitioner worked for [REDACTED]. In May 2018 and June 2018, Petitioner had [REDACTED] in earnings each month from her employment. In

July 2018, August 2018, and September 2018, Petitioner had \$[REDACTED] in earnings each month from her employment. Exhibit A, pp. 50-60.

3. During the relevant time period, the household had unearned income in the form of RSDI from the Social Security Administration. In total, the household had \$1,065 in RSDI income in May 2018 and June 2018. In July 2018, August 2018, and September 2018, the household had a total of \$1,480 in RSDI income. Exhibit A, pp. 50-60.
4. In March 2018, [REDACTED] began working for [REDACTED]. He regularly worked for [REDACTED] thereafter for all times relevant to the instant matter. Exhibit A, pp. 11-14.
5. In March 2018, [REDACTED] began working for [REDACTED]. He regularly worked for [REDACTED] thereafter for all times relevant to the instant matter. Exhibit A, pp. 6-9.
6. The Department concedes that Petitioner timely reported the new employment and income to the Department.
7. The Department further concedes that it did not factor into Petitioner's FAP budget the income from [REDACTED] or [REDACTED] employment.
8. In May and June 2018, Petitioner had a household of five and received \$649 in FAP benefits each month. Exhibit A, p. 49. In July 2018, August 2018, and September 2018, Petitioner had a household of four. In July 2018 and August 2018, Petitioner received \$301 in FAP benefits each month. In September 2018, Petitioner received \$299 in FAP benefits. Exhibit A, p. 49-60.
9. When calculating Petitioner's monthly allotment of FAP benefits, the Department did not factor in [REDACTED] income from his employment with [REDACTED] or [REDACTED] income from his employment with [REDACTED]. Exhibit A, pp. 49-60.
10. On October 16, 2018, a Department worker forward the matter to a Recoupment Specialist after realizing that income was not being properly budgeted into Petitioner's FAP equation. Exhibit A, p. 5.
11. On July 26, 2019, the Recoupment Specialist issued a Notice of Overissuance to Petitioner informing Petitioner that the Department determined Petitioner received a \$1,179 agency error overissuance of FAP benefits from May 1, 2018 through September 30, 2018. Exhibit A, pp. 61-66.
12. On [REDACTED] 2019, Petitioner submitted to the Department a timely request for hearing objecting to the Department's efforts to establish an overissuance of FAP benefits.

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 seeking to establish an alleged \$1,179 overissuance of FAP benefits issued to Petitioner from May 1, 2018 through September 30, 2018. The Department alleges that the overissuance was caused by the Department's error in failing to factor into Petitioner's FAP budget the income from employment from two household members, which were timely reported to the Department. The Department designated the overissuance an agency error overissuance. In calculating the amount of the alleged overissuance, the Department factored in income for the household to calculate the benefits Petitioner's group should have received during the alleged overissuance period. The Department now seeks to recoup and/or collect from Petitioner the difference between what Petitioner's group received and what the Department believes Petitioner's group should have received.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 2018), p. 1. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, p. 1.

An agency error overissuance is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 5. For agency error overissuances, the overissuance period starts the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the recoupment specialist, whichever 12 month period is later. BAM 705 (January 2016), pp. 5-6. The overissuance period ends the month before the benefit is corrected. BAM 705, pp. 5-6. Regardless of whether the overissuance was caused by client error or agency error, the Department must attempt to establish any alleged overissuance over \$250. BAM 700, p. 5; BAM 715 (October 2017), p. 7.

From May 1, 2018 through September 30, 2018, the Department issued to Petitioner \$2,199 in FAP benefits. In determining Petitioner's monthly FAP amount for that time period, the Department neglected to include the reported income of [REDACTED] and [REDACTED]. When the income was included in the budget, it was determined

that Petitioner was only entitled to \$1,020 during that time period. Thus, the Department determined that Petitioner received an overissuance of FAP benefits totaling \$1,179.


After reviewing the record, the Department has met its burden of proving that Petitioner received a \$1,179 overissuance of FAP benefits from May 1, 2018 through September 30, 2018 on account of the Department's failure to properly budget Petitioner's reported income. Petitioner's objections to the unfairness of the Department's actions in this case amount to equitable arguments. Unfortunately, the undersigned Administrative Law Judge does not have any equitable powers and must follow the law and Department policy, which compels the Department to seek to establish overissuances, even when those overissuances were caused by the Department's own errors, as was the case here.

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 received a \$1,179 Agency Error overissuance of FAP benefits from May 1, 2018 through September 30, 2018. The Department is entitled to initiate recoupment and/or collection activities for the overissuance, less any amounts already recouped and/or collected, pursuant to law and Department policy.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

JM/cg



John Markey
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-Wayne-41-Hearings
MDHHS-Recoupment Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

**Petitioner –
Via First-Class Mail:**

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**Authorized Hearing Rep. –
Via First-Class Mail:**

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