



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], MI [REDACTED]

Date Mailed: October 21, 2019
MOAHR Docket No.: 19-010183
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 7 CFR 273.15, and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on October 16, 2019, from Lansing, Michigan. Petitioner, [REDACTED], appeared and represented herself. Respondent, Department of Health and Human Services (Department), had April Ketner, Recoupment Specialist, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 35-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Does Petitioner owe the Department a debt of \$2,020.00 for Food Assistance Program (FAP) benefits that were overissued to Petitioner from March 2019 through June 2019?

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 FAP recipient.
2. On [REDACTED], 2019, Petitioner applied for Medical Assistance (MA) from the Department. In the application, Petitioner reported that she was employed by Veddler Dairy.
3. The Department was previously unaware Petitioner was employed by [REDACTED].
4. On February 4, 2019, the Department mailed a verification checklist to Petitioner to obtain verification of "wages, salaries, tips, and commissions" as well as

“verification of employment.” The Department instructed Petitioner to provide her last 30 days of check stubs and have Veddler Dairy complete a verification of employment (DHS-38) form. The Department instructed Petitioner to provide all requested information to the Department by February 14, 2019.

5. Petitioner did not provide any of the requested information to the Department by February 14, 2019.
6. Petitioner remained employed by [REDACTED] through March 5, 2019.
7. From March 2019 through June 2019, the Department issued \$2,020.00 in FAP benefits to Petitioner.
8. On June 25, 2019, the Department discovered that Petitioner never provided the requested information that was due February 14, 2019. The Department determined that Petitioner’s FAP benefits should have terminated for her failure to provide requested verifications.
9. On August 29, 2019, the Department determined that Petitioner was overissued FAP benefits due to the Department’s error because the Department continued to issue FAP benefits to Petitioner after the date it should have terminated her FAP benefits for her failure to provide requested verifications.
10. On August 29, 2019, the Department issued a notice of overissuance to Petitioner to notify her that she was overissued \$2,020.00 in FAP benefits from March 2019 through June 2019 due to the Department’s error.
11. On September 17, 2019, Petitioner filed a hearing request to dispute the Department’s decision.

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) 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 administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

When a client receives more benefits than she was entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 1, 2018), p. 1. The overissuance amount is the amount of benefits in excess of the amount the client was eligible to receive. *Id.* at p. 2. In this case, the Department issued Petitioner more FAP benefits than what she was eligible to receive because the Department issued Petitioner

FAP benefits after it should have terminated her FAP benefits for her failure to provide requested verifications by February 14, 2019. When Petitioner failed to provide the requested verifications by February 14, 2019, the Department should have terminated Petitioner's FAP benefits. The Department failed to terminate Petitioner's FAP benefits, which caused the Department to continue issuing FAP benefits to Petitioner.

The Department alleged the total amount of the overissuance is \$2,020.00, the amount of the FAP benefits issued from March 2019 (when Petitioner's FAP benefits should have been terminated) to June 2019 (when the Department discovered its error). However, this is not a situation in which Petitioner would not have been eligible for any of the FAP benefits that she was issued. The Department's alleged overissuance does not take into consideration the fact that Petitioner would have taken action to have her FAP benefits reinstated that same month had the Department timely terminated Petitioner's FAP benefits effective March 1, 2019, as it should have.

Petitioner was issued FAP benefits based on a group size of three and a household income of \$[REDACTED] and Petitioner should have been issued FAP benefits based on a group size of three with her income budgeted. Had the Department budgeted Petitioner's income, Petitioner would have still received a FAP benefit (albeit less than the \$505.00 per month she was issued). Thus, had the Department terminated Petitioner's FAP benefits when it should have, Petitioner would have had her FAP benefits reinstated, and the overissuance would have been less than what the Department is now alleging. Therefore, the most accurate calculation of Petitioner's overissuance would have been one calculated based on her income.

The Department had an obligation to prevent overissuances. BAM 700 (October 1, 2018), p. 3. A corollary to the Department's obligation to prevent overissuances is the obligation to mitigate overissuances. In this case, that means the Department should have considered the fact that Petitioner would have had her FAP benefits reinstated had the Department timely terminated her FAP benefits.

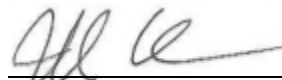
For these reasons, I must find that the Department did not properly determine the overissuance. Therefore, the Department's overissuance must be reversed.

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 did not act in accordance with its policies and the applicable law when it issued its recoupment notice on August 29, 2019, for an overissuance of FAP benefits totaling \$2,020.00.

IT IS ORDERED that the Department's overissuance determination is **REVERSED**. The Department shall begin to implement this decision within 10 days.

JK/ml



Jeffrey Kemm
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

DHHS Department Rep.

MDHHS-Recoupment – Via Electronic
Mail
235 S Grand Ave
Suite 1011
Lansing, MI
48909

DHHS

Sheila Crittenden
10641 W. Watergate Rd.
Cadillac, MI
49601

Wexford County DHHS – Via Electronic
Mail

OIG – Via Electronic Mail

L. Bengel – Via Electronic Mail

Petitioner

[REDACTED] – Via First Class Mail
[REDACTED]
[REDACTED], MI
[REDACTED]