



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: October 30, 2019
MOAHR Docket No.: 19-010544
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 October 25, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Brianna Sweers, Eligibility Specialist and April Ketner, 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 FAP benefit recipient during the period of April 1, 2017 through October 31, 2017 (Exhibit A, p. 11).
2. Petitioner's FAP group consisted of herself and her five children.
3. On August 26, 2019, Petitioner completed a FAP redetermination (Exhibit A, pp. 73-76).
4. On November 2, 2016, the Department sent Petitioner a Notice of Case Action (NOCA) informing her that her FAP benefits were based on an earned income

amount of \$0 and that she was to report all changes to the Department, including changes in income/employment (Exhibit A, pp. 69-72).

5. On January 23, 2017, Petitioner's adult son obtained employment at [REDACTED] (Exhibit A, p. 98).
6. Petitioner's son was also employed at [REDACTED] in the third and fourth quarter of 2017 (Exhibit A, p. 91).
7. On March 6, 2017, Petitioner completed a redetermination related to her Medical Assistance (MA) benefit case (Exhibit A, pp. 61-68). Petitioner reported no household earned income.
8. On April 6, 2017, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing her that her son was eligible for MA benefits (Exhibit A, pp. 107-109). Petitioner was also advised to report all changes to the Department, including changes in income and employment.
9. On June 18, 2019, the Department sent Petitioner a Notice of Overissuance informing her that she was overissued FAP benefits during the period of April 1, 2017 through October 31, 2017, in the amount of \$[REDACTED] (Exhibit A, pp. 6-10).
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's adult son obtained employment on January 23, 2017, at [REDACTED]. Petitioner's son was also employed at [REDACTED] in the third and fourth quarters of 2017. The Department testified that Petitioner did not report the income to the Department. As a result, the income was not budgeted, and Petitioner received an overissuance in FAP benefits during the period of April 1, 2017 through October 31, 2017, in the amount of \$[REDACTED].

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 benefits as a result of client error, the Department presented a NOCA issued to Petitioner on November 2, 2016. The NOCA advised Petitioner that her FAP benefits were based on an earned income amount of \$0, and that she needed to report all changes to the Department, including changes in income/employment. The Department also presented a redetermination for MA benefits completed by Petitioner on March 6, 2017. In the redetermination, Petitioner did not report any earned income within the household. Additionally, Petitioner was sent a HCCDN on April 6, 2017. Again, Petitioner was advised of her reporting responsibilities.

The Department presented an employment verification showing Petitioner's son was hired at [REDACTED] on January 23, 2017. Petitioner's son received his first paycheck on February 3, 2017 and continued to receive income through August 18, 2017 (Exhibit A, p. 98). The Department also submitted Petitioner's son's quarterly wage report showing he received earnings at [REDACTED] in all of 2017, as well as at [REDACTED] in the third and fourth quarters of 2017 (Exhibit A, p. 91).

Petitioner completed a redetermination on March 6, 2017 and included her son in her household. Petitioner did not report any earned income for her son. Petitioner's son was employed and receiving income at the time the March 6, 2017 redetermination was submitted. Therefore, the Department presented sufficient evidence that the overissuance of FAP benefits was a result of client error.

In support of its argument that Petitioner was overissued benefits in the amount of \$[REDACTED] the Department presented Petitioner's Benefit Summary Inquiry showing she was issued \$[REDACTED] in FAP benefits during the period of April 1, 2017 through October 31, 2017. The Department also submitted Overissuance Budgets showing Petitioner was only entitled to \$[REDACTED] in FAP benefits during that time period, with the inclusion of Petitioner's son's unreported income (Exhibit A, pp. 12-26).

Included in its evidence, the Department presented a redetermination completed by Petitioner on August 31, 2017 (Exhibit A, pp. 53-60). In the redetermination, Petitioner

reported that her son was no longer in the household as of July 1, 2017. Petitioner stated she reported the change prior to August 31, 2017, but there was no evidence to support her claim, nor could she remember exactly when she reported the change.

The “10-10-12 Rule” is the unofficial name for the Department policies generally requiring at least 32 days between the date of a reported circumstance change and the first month that an overissuance can be established when based on the circumstance change. BAM 105 (January 2019), p. 11, BAM 220 (April 2019), pp. 7 and 12. The rule is applicable to the present case. Application of the 10-10-12 rule would result in the overissuance period ending September 30, 2017. Therefore, the Department erred when it included October 2017 in its overissuance amount. Thus, the Department erred when it included the \$[REDACTED] in overissued FAP benefits in October 2017. The Department did establish that Petitioner was overissued FAP benefits in the amount of \$[REDACTED] during the period of April 1, 2017 through September 30, 2017.

DECISION AND ORDER

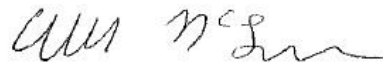
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it determined Petitioner was overissued FAP benefits during the period of April 1, 2017 through September 30, 2017, in the amount of \$[REDACTED]. The Department failed to establish that it acted in accordance with policy when it determined Petitioner was overissued FAP benefits during October 2017, in the amount of \$[REDACTED].

Accordingly, the Department’s decision is **AFFIRMED IN PART** with respect to the overissuance period of April 1, 2017 through September 30, 2017 and **REVERSED IN PART** with respect to the overissuance in October 2017.

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. Initiate recoupment and/or collection procedures for the amount of \$[REDACTED] for the period of April 1, 2017 through September 30, 2017, less any previously recouped/collected amounts, in accordance with Department policy; and
2. Delete the overissuance in the amount of \$[REDACTED] for October 2017.

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-Lapeer-Hearings
MDHHS-RECOUPMENT-HEARINGS
M. Holden
D. Sweeney
BSC2-Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

████████████████████
████████████████████
████████████████████