



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR



Date Mailed: December 26, 2019
MOAHR Docket No.: 19-011771
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 December 19, 2019, from Lansing, Michigan. Petitioner, [REDACTED], appeared and represented herself. Respondent, Department of Health and Human Services (Department), had Darcus Braswell, Recoupment Specialist, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 44-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly determine that Petitioner owes the Department a debt of \$500.00 for Food Assistance Program (FAP) benefits that were overissued to her from April 2019 through August 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 is a FAP recipient.
2. Petitioner was receiving \$848.00 per month from social security.
3. The Department budgeted Petitioner's income based on her \$848.00 monthly social security income.

4. On or about August 2019, Petitioner went to the Social Security Administration (SSA) to inquire about receiving social security based on her ex-husband's work history.
5. Shortly thereafter, the SSA approved Petitioner for an increase. The SSA approved Petitioner for \$1,197.00 per month, effective February 1, 2019. The SSA issued a lump sum payment to Petitioner for backpay, and then the SSA began issuing regular monthly payments at the increased amount of \$1,197.00.
6. The Department received an alert that Petitioner received an increase in income from SSA, effective February 1, 2019.
7. The Department reviewed Petitioner's case and determined that she was overissued FAP benefits because she had unreported income.
8. On October 10, 2019, the Department mailed a notice of overissuance to Petitioner to notify her that she was overissued \$500.00 in FAP benefits from April 2019 through August 2019.
9. On October 21, 2019, Petitioner requested a hearing 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.

In this case, Petitioner alleged that she received a lump sum payment for back pay from the SSA, and Petitioner denied receiving an increase in monthly social security payments beginning in February 2019. The Department did not rebut Petitioner's testimony. Although the Department presented evidence to establish that Petitioner was entitled to an increase in social security effective February 1, 2019, the Department did not present sufficient evidence to establish that Petitioner actually received an increase starting February 1, 2019. It is very likely that Petitioner made a claim for increased social security payments from the SSA, the SSA processed it, and then issued a lump sum for back pay.

Petitioner presented sufficient evidence to establish that the Department's actions were not in accordance with its policies and the applicable law. Based on the evidence

presented, the Department did not properly determine Petitioner's countable income when it determined that she was overissued FAP benefits because it counted her increase in income before she received it. Income is not countable until it is received. BEM 500 (July 1, 2017), p. 3. Lump sum payments are not treated as income; they are treated as an asset in the month received. *Id.* at 7. Since Petitioner did not receive an increase in social security payments until August 2019, Petitioner's increase was not countable until August 2019. Thus, the Department should not have determined her increase in income was effective February 1, 2019. When the Department determined that Petitioner's increase in income was effective February 1, 2019, the Department improperly determined that she was overissued FAP benefits.

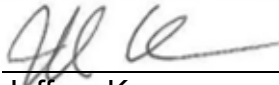
The Department did not properly establish that Petitioner owes the Department \$500.00 for FAP benefits overissued from April 2019 through August 2019. However, the Department may review its overissuance budget, determine its overissuance in accordance with this decision, and then issue a new notice of overissuance to Petitioner pursuant to 7 CFR 273.18(a)(3)(iii).

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 determined that Petitioner owes the Department a debt of \$500.00 for FAP benefits that were overissued to her from April 2019 through August 2019.

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

Courtney Jenkins
22 Center Street
Ypsilanti, MI 48198

DHHS Department Rep.

MDHHS-Recoupment
235 S. Grand Ave.
Suite 1011
Lansing, MI 48909

Washtenaw (20) County DHHS – Via
Electronic Mail

M. Holden – Via Electronic Mail

D. Sweeney – Via Electronic Mail

Petitioner

