



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: March 3, 2020
MOAHR Docket No.: 20-000704
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 February 24, 2020, from Detroit, Michigan. Petitioner appeared at the local office and represented himself. The Department of Health and Human Services (Department) was represented by Michelle Morley; Assistance Payment Supervisor, at the local office, and Jennifer Braxmaier; Recoupment Specialist, who participated via 3-way telephone conference.

ISSUE

Did the Department properly conclude that Petitioner was over-issued Food Assistance Program (FAP) benefits totaling \$1,869 for the period February 1, 2019 to January 31, 2020 due to agency error?

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, receiving FAP for the two-year certification period covering February 1, 2017 to January 31, 2020.
2. On January 4, 2019, Petitioner reported to the Department that he had moved in with his mother, [REDACTED] (Exhibit A, pp. 10-11).
3. On January 7, 2019, the Department received a signed, handwritten letter from Ms. [REDACTED] stating that she received \$450 from Petitioner for January and "[h]e is to pay me this every month, this includes rent + heat + lights." (Exhibit A, p. 12.)

4. On January 17, 2019, the Department sent Petitioner a Notice of Case Action notifying him that he was eligible for \$192 in monthly FAP benefits for the period February 1, 2019 to January 31, 2020. The Notice included a budget showing that Petitioner was being credited for \$450 in monthly housing costs and a \$543 monthly heat/utility (h/u) standard deduction. (Exhibit A, pp. 13-16.)
5. On January 6, 2020, in reviewing Petitioner's redetermination, the Department realized that it had erroneously applied the h/u standard deduction in calculating Petitioner's FAP eligibility from February 1, 2019 to January 31, 2020 where the landlord's January 7, 2019 statement indicated that Petitioner's rent included heat and electric (Exhibit A, pp. 17-18).
6. On January 6, 2020, the Department sent Petitioner a Notice of Overissuance notifying him that he was over-issued \$1,869 in FAP benefits for the period February 1, 2019 to January 31, 2020 due to agency error because the Department failed to update his shelter expenses to remove the heat/electric expense allowance starting February 1, 2019. (Exhibit A, pp. 48-53).
7. On January 15, 2020, the Department received the landlord's statement that Petitioner paid her \$400 in monthly rent and \$50 monthly for gas (Exhibit A, p. 54).
8. On [REDACTED] 2020, the Department received Petitioner's request for hearing disputing the Department's assertion that he was over-issued FAP benefits (Exhibit B).

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.

Department policy provides that when a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the over-issuance, whether due to client error or agency error. BAM 700 (October 2018), p. 1, 5-7. An agency error is caused by the incorrect actions (including delayed or no action) by the Department, including situations where the Department did not use, or incorrectly used, available information. BAM 705 (October 2018), p. 6. The amount of the over-issuance is the

benefit amount the group actually received minus the amount the group was eligible to receive. BAM 715 (October 2017), p. 6; BAM 705, p. 6.

In this case, the Department alleges that, due to its error, it improperly credited Petitioner with the \$543 h/u standard deduction for the period February 1, 2019 to January 31, 2020 that Petitioner was not eligible to receive, resulting in Petitioner receiving more FAP benefits than he was eligible to receive.

In calculating a client's FAP budget, the Department considers, in part, the client's responsibilities for payment of heat or other utilities and applies a standard deduction for those expenses. BEM 554 (January 2020 and August 2017), pp. 15-24. The h/u standard deduction, which is the most advantageous deduction to a client, applies when a FAP group has any heating or cooling expense. BEM 554, p. 16. FAP groups that have a heating expense or contribute to the heating expense separate from rent payments or who pay for cooling (including room air conditioners) are entitled to the h/u standard. BEM 554, pp. 16-17, 20. FAP groups whose heat is included in their rent or fees are not eligible for the h/u standard, unless they are billed for excess heat payments by their landlords. BEM 554, p. 17. Likewise, FAP groups whose electricity is included in rent are not eligible for the h/u standard unless their landlords bill them separately for excess cooling. BEM 554, p. 20. An individual not responsible for heat or electric may be nonetheless be eligible for the h/u standard if in the 12 months preceding the redetermination the individual received either a LIHEAP payment (including a State Emergency Relief State Emergency Relief (SER) energy-related payment) or a home heating credit (HHC) in an amount greater than \$20. BEM 554, pp. 16-19).

FAP groups who have no heating/cooling expense and, as such, are not eligible for the h/u standard deduction, but have, or contribute to the cost of, other utility expenses (for non-heat electric, water and/or sewer, telephone, or cooking fuel) are eligible for the individual utility standards as provided in the amount identified in RFT 255. The Department must use the individual standard for *each* utility the FAP group has responsibility to pay. BEM 554, p. 21.

In this case, Petitioner's mother, who was also his landlord, notified the Department in January 2019 that Petitioner was responsible for paying \$450 monthly to her for "rent + heat + lights." At the hearing, Petitioner explained that his mother was careless when she wrote the note, and the note she submitted to the Department in January 2020 stating that he paid \$450, with \$400 towards rent and \$50 towards gas, more accurately reflected how the amounts he paid were used. Although the Department could not apply the information in the January 2020 housing letter retroactively to his benefits from February 2019 to January 2020, the note does support Petitioner's testimony that his and his mother's arrangement provided for some of the rent money he paid to go towards heating expenses. It is further noted that Petitioner testified that he sometimes paid his mother additional funds towards air conditioning expenses in the summer. Because the Department did not request any verification concerning Petitioner's payment of utilities in connection with his January 2019 reported housing change,

Petitioner did not have the opportunity to provide this information to the Department. Because Petitioner established that he had heating and excess cooling expenses that he contributed towards when he moved in with his mother in January 2019, he was eligible for the h/u standard. Because the Department's over-issuance claims are based solely on Petitioner receiving a h/u standard deduction it alleges Petitioner was not eligible to receive, the Department has failed to establish that Petitioner was over-issued FAP benefits.

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 Department policy when it determined that Petitioner was over-issued \$1,869 in FAP benefits from February 1, 2019 to January 31, 2020.

DECISION AND ORDER

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

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. Remove from Petitioner's case the \$1,869 FAP over-issuance for February 1, 2019 to January 31, 2020.
2. Supplement Petitioner for any amounts recouped and/or collected from Petitioner for the alleged FAP over-issuance during the over-issuance period.

ACE/tlf



Alice C. Elkin
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-Recoupment
MDHHS-Gr8North-Hearings
BSC1 Hearing Decisions
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

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