



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: March 18, 2020
MOAHR Docket No.: 20-000967
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 March 11, 2020, from Detroit, Michigan. Petitioner was present with her husband, [REDACTED]. The Department of Health and Human Services (Department) was represented by Aundrea Jones, Hearing Facilitator and Walita Randle, 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 an ongoing FAP recipient between the period of December 1, 2015 through May 31, 2016 (Exhibit A, pp. 14-15).
2. On October 9, 2015, Petitioner submitted a check stub for her husband's income from employment (Exhibit A, p. 29).
3. On January 21, 2020, the Department sent Petitioner a Notice of Overissuance informing her that she was overissued FAP benefits for the period of December 1, 2015 through May 31, 2016 in the amount of \$2,102 due to agency error (Exhibit A, pp. 6-7).

4. On February 3, 2020, 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 submitted a check stub for her husband's income from employment on October 9, 2015. Per the employment verification submitted by the Department, Petitioner's husband began working on September 28, 2015 and received his first paycheck on October 8, 2015 (Exhibit A, p. 30 and 64).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2016), pp. 6-7.

Despite the information provided by Petitioner, the Department did not include her husband's earned income in the calculation of her FAP benefit amount throughout the period of December 1, 2015 through May 31, 2016. As such, the Department testified that Petitioner's FAP benefit amount was improperly calculated, as the earned income from Petitioner's husband's employment should have been included in her FAP budget. The Department testified that Petitioner was overissued FAP benefits for the period of December 1, 2015 through May 31, 2016, in the amount of \$2,102 due to agency error.

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. 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.

The Department presented a pay stub submitted by Petitioner for her husband's income from employment (Exhibit A, p. 29). The pay stub was submitted on October 9, 2015.

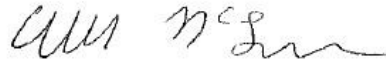
The Department also presented an employment verification showing Petitioner's husband's wages during the period of December 1, 2015 through May 31, 2016 (Exhibit A, pp. 30-63). As such, the Department correctly determined Petitioner's husband's earned income was not properly budgeted, and she was overissued FAP benefits as a result of agency error.

The Department presented Petitioner's Benefit Summary, which showed she was issued \$4,626 in FAP benefits for the period of December 1, 2015 through May 31, 2016 (Exhibit A, p. 15). The Department presented overissuance budgets for the same time period (Exhibit A, pp. 16-28). The Department recalculated Petitioner's FAP benefits by adding Petitioner's husband's earned income for each month as shown on the employment verification. The budgets show that for the period of December 1, 2015 through May 31, 2016, Petitioner was only entitled to receive \$2,524 in FAP benefits. Therefore, the Department established it properly determined Petitioner was overissued FAP benefits in the amount of \$2,102.

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 received an overissuance of FAP benefits in the amount of \$2,102. Accordingly, the Department's decision is **AFFIRMED**.

EM/tlf



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-Recoupment
MDHHS-Wayne-18-Hearings
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D. Sweeney
M. Holden
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Petitioner – Via First-Class Mail:

