



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: June 11, 2020
MOAHR Docket No.: 20-002970
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a four way telephone hearing was held on June 8, 2020, from Clawson, Michigan. The Department was represented by Rhonda Holland, Recoupment Specialist and Aundrea Jones, Hearing Facilitator. The Petitioner was represented by herself.

ISSUE

Did Petitioner receive an over-issuance (OI) of Food Assistance (FAP) Benefits?

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 recipient of FAP benefits from the Department for the period of January 1, 2019 through July 31, 2019.
2. The Department alleges Petitioner received a FAP OI during the OI period of March 1, 2019 through July 31, 2019, due to Petitioner's client error due to failure to report income from employment.
3. The Petitioner was employed by [REDACTED] beginning January 8, 2019 and received her first paycheck on January 19, 2019. The Department first received proof of employment from Petitioner's employer on or about July 29, 2019. Petitioner's employment ended on August 2, 2019. Exhibit A, pp. 29-33.

4. The Petitioner was a change reporter and was required to report her income received on January 19, 2019 within 10 days of receiving the first payment reflecting the change and did not report her receipt of income until July 29, 2019 redetermination and August 6, 2019 redetermination interview.
5. Petitioner completed a redetermination interview on or about August 6, 2019 at which time she reported employment and income which began January 2019. The Department's electronic data system did not contain any reporting of earned income by the Petitioner in January 2019 ongoing until the redetermination review.
6. Petitioner completed a redetermination for July 27, 2018 at which time she reported she was not employed and was not receiving earned or unearned income. Exhibit A, p. 38.
7. On March 4, 2020 the Notice of Overissuance was sent to Petitioner advising Petitioner of the amount of the OI and stating that she had been overissued \$915.00 for the OI period of March 1, 2019 through July 31, 2019. Exhibit A, p.7.
8. On [REDACTED] 2020, the Petitioner sent the Department a request for hearing disputing the Department's actions. Exhibit A, p. 6.
9. The Department alleges that Petitioner received a \$915.00 OI that is still due and owing to the Department. Exhibit A, p.7.

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), and Department of Health and Human Services Reference Tables Manual (RFT).

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 to .3015.

In this case, the Petitioner was employed by [REDACTED] beginning January 8, 2019 and received her first paycheck on January 19, 2019. Exhibit A, pp. 29-33. The Department has alleged that Petitioner received an OI in the amount of \$915.00 due to Petitioner's failure to report her income from her employment. Based upon the evidence presented, the Department through its witnesses first learned that the Petitioner had income when she completed a redetermination interview on or about August 6, 2019. Although the Petitioner testified that she reported the income to the Department at an earlier time after she began her employment, there was no record

in the Petitioner's electronic case file that the income from employment was reported by Petitioner prior to July 29, 2019 and her redetermination review.

The Petitioner was a change reporter due to the fact that at the time of her last redetermination in July 2018 she was not working and reported no income and thus received FAP benefits based upon no income. As a change reporter, the Petitioner was required to report her income due to the start of employment within 10 days. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Petitioner received her first pay on January 19, 2019 and thus had to report her income by January 29, 2019. There was no record in Petitioner's electronic file that she Petitioner reported her income from employment on or before January 29, 2019.

Earned income reporting requirements are limited to:

- Starting or stopping employment.
- Changing employers.
- Change in rate of pay.
- Change in work hours of more than five hours per week that is expected to continue for more than one month. BAM 105 (October 2019), p.12.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2018), 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 (October 2018), 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 (October 2017), p. 10.

In support of its request for recoupment and proof that Petitioner was overissued FAP benefits, the Department presented as a witness Recoupment Specialist Rhonda Holland. Ms. Holland testified that she prepared the overissuance case and the budgets based upon the income reporting and verification of check stubs for the unreported income received by Petitioner during the period January 2019 through July 31, 2019, (OI period). Ms. Holland testified that she calculated the FAP benefits Petitioner should have received for each month of the OI period based on the addition of Petitioner's unreported income from employment. She also determined that due to Petitioner's failure to report income at any time, she correctly calculated the OI start date to be March 1, 2019 based upon the Petitioner's first pay which was received

January 19, 2019. She testified that she applied the 10/10/12 for reporting days, processing days and 12 day notice period which must be applied to determine the start of the OI period. Apply the 10/10/12, she correctly determined the OI start date to be March 1, 2019. Based upon her review of the information, Ms. Holland testified that she concluded there was client error demonstrated. She found no information that Petitioner had ever reported her employment income which began in January 2019. In addition, Ms. Jones, the Hearing Facilitator testified that there was no documentation in the Bridges System or in Petitioner's electronic case file that any pay stubs or other verification reporting employment was ever received by the Department from the Petitioner until the redetermination completed in August 2019. The Department did receive a letter with employment information from Petitioner's then employer which it requested while preparing the recoupment case on February 20, 2020. The letter was updated by the employer on March 2, 2020 and included pay stubs and start work date and end date. Exhibit A, pp. 29-33. Petitioner did not dispute the income amount received by her during the OI period.

The Petitioner for her part testified that she did provide the Department pay stubs after starting employment in January 2019 and had to provide a letter from her employer when she reported in January 2019 she had started employment. No such evidence was in the Department's system, until it requested verification of employment from Petitioner's employer by letter dated February 2, 2020. The Department testified that based upon its electronic case file records there was no reporting of income or employment by Petitioner until the July 2019 redetermination and interview with Petitioner on or about August 6, 2010. Based upon the evidence presented it is determined the Petitioner did not provide the Department earned income information until the redetermination in July 2019 and her interview in August 2019, thus client error is established.

A review of the OI budgets was made at the hearing and they were determined to be correct. Exhibit A, pp. 17-26. In support of the overissuance alleged the Department provided evidence of FAP benefits issued by the Department to Petitioner based on the Issuance Summary and Benefit Summary Inquiries to confirm the benefits received by Petitioner during the OI period. Exhibit A, pp. 16 and 15. Ms. Holland testified that she did not include a housing expense for rent when calculating the overissuance budgets. She testified that she found no evidence of a rent expense in the Department records she relied upon to determine the OI when she was preparing her OI budgets. She did include the appropriate utility allowance as a housing expense for all months of the OI period as the utility allowance was shown as an expense in the Department records an applied the utility allowance for all months that the Petitioner was entitled to have expenses applied to reduce her income other than the month of June 2019 when Petitioner income exceeded the FAP gross income limit and thus no expense could be applied as the Petitioner was per se ineligible based upon the gross income limit. Exhibit A, p. 19.

During the hearing, the Ms. Jones the Hearing Facilitator also testified that the Department records indicated that after the redetermination in July 2018 the housing

expense for rent was removed by the Petitioner's caseworker which she found correct and not unusual as the Petitioner had no income to pay for rent. There were no explanations or case notes in the Bridges system regarding the reason for rent expense stoppage. The Petitioner testified that she has always had the same rent, \$450.00 a month and had provided proof to the Department. Petitioner also testified that during a period when she was home due to an accident and not working, her son, who was not a FAP group member, paid the Petitioner's rent out of his own pocket directly to the landlord. There was no note in the case notes indicating that the Petitioner advised or reported to the Department that she was receiving rent assistance from her son to cover her rent. When asked by Ms. Jones as to how her rent was paid from the 2018 redetermination and through January 2019 when she began working, Petitioner testified that her son paid her rent and paid it directly to the landlord. In addition, when completing her redetermination for July 2018 the Petitioner noted NA (not applicable) with respect to changes in rent. Based upon the evidence presented it is determined that the rent was removed from the OI budget correctly by the Department. In addition, the fact that Petitioner's son paid her rent directly to the landlord would support why her rent was removed at redetermination in 2018 and why rent was properly not included in the OI budgets.

Department policy provides that if a FAP recipient's rent is paid directly by a person who is not part of the EDG, eligibility group, the Department is directed as follows:

Do **not** allow any expense if the entire expense is directly paid by an agency or someone outside of the group. An expense that is fully reimbursed is not allowed; BEM 554 (July 2020) p. 2.

Thus, based upon the Petitioner's testimony that her son was paying her rent in 2018 and in January 2019, it is determined that the Department correctly did not include a rent expense when calculating the overissuance. Petitioner's admission that her son paid her rent directly to the landlord would support that the rent expense should not have been included in the OI budgets based upon Department policy in BEM 554 and would have formed a basis for the rent to be removed from as an expense in 2018. Therefore, it is determined that recoupment specialist correctly assumed that the rent was not to be included based upon the Department records as an expense when determining the overissuance. In addition, the Department records as confirmed by Ms. Holland and Ms. Jones continue to show that the Petitioner's rent continued to be excluded as an expense even after the July 2019 redetermination.

The Department presented sufficient evidence to establish that Petitioner had been overissued FAP benefits as a result of client error due to failure to report her employment and income from employment.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish a FAP benefit OI to Petitioner totaling \$915.00.

DECISION AND ORDER

Accordingly, the Department is

AFFIRMED.

The Department is ORDERED to initiate collection procedures for a FAP OI of \$915.00 in accordance with Department policy.

LMF



Lynn M. Ferris
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-Wayne-18-Hearings
MDHHS-Recoupment-Hearings
D. Sweeney
M. Holden
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]