



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: August 24, 2020
MOAHR Docket No.: 20-004263
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: John Markey

HEARING DECISION

PROCEDURAL HISTORY

Following Petitioner's ██████████, 2020 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 convened on July 30, 2020 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Aundrea Jones, Hearings Facilitator.

At the outset of the July 30, 2020 hearing, it became apparent that there was some confusion regarding Petitioner's hearing request. Petitioner's ██████████ 2020 hearing request only indicated that "FAP" was the program in dispute.¹ It contained no other substantive information regarding the dispute. When the Department received the request, it reviewed Petitioner's file and determined that Petitioner's hearing request was contesting a May 30, 2019 Notice of Case Action closing Petitioner's FAP benefits case. The Department then prepared a Hearing Summary and Hearing Packet focused solely on the May 30, 2019 Notice of Case Action. Because the ██████████ 2020 hearing request was submitted long after the 90-day window to contest the May 30, 2019 Notice of Case Action, the Department sought to have the matter dismissed as untimely.

When asked to explain why she requested a hearing, Petitioner stated that her ██████████, 2020 hearing request was objecting not to the year-old May 30, 2019 Notice of Case Action, but rather to a May 12, 2020 Notice of Overissuance demanding Petitioner repay FAP benefits received in years past. The Department witness acknowledged that the Department should have applied Petitioner's ██████████, 2020 hearing request to the May 12, 2020 Notice of Overissuance rather than the May 30, 2019 Notice of Case

¹ "FAP" stands for Food Assistance Program.

Action. Despite the Department's failure to reasonably apply the hearing request in the first place, the Department was granted an adjournment to prepare for the correct issue as Petitioner did not object.

On August 5, 2020, a Notice of Hearing was issued informing the parties of the rescheduled hearing to be held on August 19, 2020 at 8:30 am. Petitioner appeared at the hearing and represented herself. The Department was once again represented by Aundrea Jones, Hearings Facilitator. At no point prior to the August 19, 2020 hearing did the Department properly serve the documentary evidence it intended to rely upon to support the contested action.

ISSUE

Did the Department properly establish that Petitioner received an overissuance of Food Assistance Program (FAP) benefits from August 1, 2017 through September 30, 2017?

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 had an open FAP benefits case at some point before May 2019.
2. On May 12, 2020, the Department issued to Petitioner a Notice of Overissuance informing Petitioner that the Department determined Petitioner received a \$356 client error overissuance of FAP benefits from August 1, 2017 through September 30, 2017.
3. On ████████ 2020, Petitioner submitted to the Department a request for hearing objecting to the Department's action.

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, the Department seeks to establish that Petitioner received a \$356 client error overissuance of FAP benefits from August 1, 2017 through September 30, 2017. Petitioner requested a hearing to contest the Department's actions.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700, p. 1. A client error overissuance occurs when the client receives more benefits than he or she was entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 7. An agency error overissuance is caused by incorrect action (including delayed or no action) by the Department. BAM 705 (January 2016), p. 1. Regardless of whether the overissuance was caused by client error or agency error, the Department must attempt to establish any alleged overissuance over \$250. BAM 700, p. 5; BAM 715 (January 2016), p. 7.

The Department believed that Petitioner had received more FAP benefits than she was entitled to receive, so it initiated a recoupment action by sending Petitioner the May 12, 2020 Notice of Overissuance. Upon receiving that notice, Petitioner promptly requested a hearing challenging the Department's action.

Clients have the right to contest a Department decision affecting eligibility or benefit levels, including termination of program benefits, when the client believes the decision is incorrect. BAM 600 (April 2017), pp. 1, 5. When a hearing request is filed, the matter is transferred to the Michigan Office of Administrative Hearings and Rules (MOAHR) for a hearing before an Administrative Law Judge. BAM 600, p. 1. In preparation for the hearing, the Department is required to send to MOAHR and the client a hearing summary. BAM 600, pp. 9-10, 23. The hearing summary is required to include a clear, concise statement of the case action taken, a chronological summary of events, and citations to relevant law and policy, amongst other things. BAM 600, p. 10. Additionally, a hearing packet must be prepared to send along with the hearing summary. BAM 600, p. 10. The completed hearing packet must include, at a minimum, the relevant Notice of Case Action or Health Care Coverage Determination Notice and a copy of all documents the Department intends to offer to support its action. BAM 600, p. 10.

At the hearing, the Department representative and client are tasked with presenting their respective cases with reference to the documents provided in the hearing packet or otherwise properly served under the Michigan Administrative Rules. BAM 600, p. 37. After hearing the evidence, the Administrative Law Judge has the duty to review the evidence presented and based on that evidence, determine whether the Department met its burden of proving that the challenged actions were taken in compliance with law and Department policy. BAM 600, p. 39.

The only documents the Department submitted to MOAHR were included in the hearing packet the Department prepared for the July 30, 2020 hearing. Those documents were not in any way relevant to the action contested by the Department. After that hearing, the Department did not submit any further documentation to MOAHR. Thus, under the Michigan Administrative Rules and BAM 600, the Department did not submit any documentation to support its action. Mich. Admin. Code, R. 792.10110. Without any documentation to support the Department's action, the Department failed to sustain its burden of proving that its action was taken in compliance with law and Department policy.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner received an overissuance of FAP benefits from August 1, 2017 through September 30, 2017.

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. Delete from Petitioner's case the alleged overissuance of FAP benefits Petitioner received from August 1, 2017 through September 30, 2017.

IT IS FURTHER ORDERED that the Department is prohibited from any further attempts to establish an overissuance with respect to FAP benefits issued to Petitioner from August 1, 2017 through September 30, 2017.

JM/tm



John Markey
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
M. Holden
D. Sweeney
MDHHS-Recoupment-Hearings
BSC4-Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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