



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: August 25, 2020
MOAHR Docket No.: 20-004669
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on August 18, 2020. Petitioner was represented by herself. The Department was represented by Kathleen Zewatsky.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits due to Department error that must be recouped?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On July 2, 2019, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of one not receiving any earned income from employment. Exhibit A, pp 26-30.
2. On December 30, 2019, the Department received verification that Petitioner had started employment on September 16, 2019. Exhibit A, pp 24-25.
3. Petitioner received earned income from employment from February 6, 2020, through March 26, 2020. Exhibit A, pp 22-23.
4. From February 1, 2020, through March 31, 2020, Petitioner received Food Assistance Program (FAP) benefits totaling \$388. Exhibit A, p 15.

5. On June 26, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing her that a \$356 overissuance of Food Assistance Program (FAP) benefits would be recouped. Exhibit A, pp 8-13.
6. On [REDACTED] [REDACTED] [REDACTED] the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits. Exhibit A, pp 5-6.

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.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

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. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (October 1, 2019), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (April 1, 2019), p 7. A pended negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

On July 2, 2019, the Department notified Petitioner that she was eligible for FAP benefits as a household of one that was not receiving any earned income from employment.

Petitioner started employment on September 16, 2019, and the Department received verification of Petitioner's employment on December 30, 2019.

Petitioner received earned income from employment from February 6, 2020, through March 26, 2020. Due to Department error, the earned income Petitioner received from her employment was not applied towards her eligibility for FAP benefits. Petitioner received FAP benefits totaling \$388 from February 1, 2020, through March 31, 2020. If the Department had properly acted on the verification of employment received on December 30, 2019, then Petitioner's eligibility for ongoing FAP benefits would have been redetermined by the first benefit period after January 31, 2020. If Petitioner's earned income had been applied towards her eligibility for FAP benefits in February and March of 2020, she would have been eligible for only \$32 of those benefits. Therefore, Petitioner received \$356 of FAP benefits that she was not eligible for.

Petitioner argued that she should not be required to repay the overissuance caused by the Department's error.

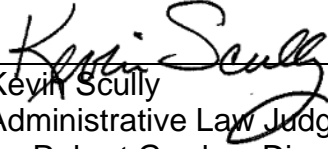
However, the Petitioner's grievance centers on dissatisfaction with the Department's current policy. The Petitioner's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

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 that Petitioner received a \$356 overissuance of Food Assistance Program (FAP) benefits due to Department error from February 1, 2020, through March 31, 2020.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/nr



Kevin Scully
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 Department Rep.

MDHHS-Recoupment- via electronic mail
235 S Grand Ave
Suite 1011
Lansing, MI
48909

Jackson County DHHS- via electronic mail


OIG Hearings- via electronic mail

L. Bengel- via electronic mail

DHHS

Tamara Little
301 E. Louis Glick Hwy.
Jackson, MI
49201

Petitioner

 - via first class mail
MI