



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], MI [REDACTED]

Date Mailed: November 5, 2020
MOAHR Docket No.: 20-006198
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 October 28, 2020. Petitioner, [REDACTED] appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Julie Barr, Recoupment Specialist.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-122.

ISSUE

Did the Department properly determine that Petitioner received Food Assistance Program (FAP) benefits that she was not eligible for and 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 an [REDACTED], 2018, application for FAP, Petitioner reported the household did not pay for any utilities (not included in rent); did not pay an extra fee for air conditioning if utilities are included in rent; and had not received more than \$20.00 in State Emergency Relief (SER) energy payments, Michigan Energy Assistance Program (MEAP) or the Home Heating Credit (HHC) in the last 12 months. (Exhibit A, pp. 12-17)
2. During an August 7, 2018, interview for the FAP program, Petitioner reported a rent expense of \$400.00 and no utility expenses or SER/MEAP/HHC. (Exhibit A, pp. 10-11)

3. On August 10, 2018, the Department received verification that Petitioner pays \$400.00 per month to rent a bedroom and bathroom. (Exhibit A, p. 78)
4. A December 8, 2018, Notice of Case Action issued to Petitioner regarding a reduction in the monthly FAP allotment included a budget summary showing the Department had included a heat/utility standard in Petitioner's FAP budget. (Exhibit A, pp. 59-62)
5. On June 10, 2019, Petitioner submitted a Mid-Certification Contact Notice. Petitioner reported no change in housing expenses. (Exhibit A, pp. 18-20)
6. An August 13, 2019, Notice of Case Action issued to Petitioner regarding the approval of FAP for the new certification period included a budget summary showing the Department had included a heat/utility standard in Petitioner's FAP budget. (Exhibit A, pp. 63-67)
7. A September 7, 2019, Notice of Case Action issued to Petitioner regarding a reduction in the monthly FAP allotment included a budget summary showing the Department had included a heat/utility standard in Petitioner's FAP budget. (Exhibit A, pp. 68-72)
8. A December 7, 2019, Notice of Case Action issued to Petitioner regarding a reduction in the monthly FAP allotment included a budget summary showing the Department had included a heat/utility standard in Petitioner's FAP budget. (Exhibit A, pp. 73-77)
9. Petitioner was approved for HHC of \$128.00 as of April 15, 2020. (Exhibit A, pp. 106-107)
10. Petitioner did not receive SER or Low Income Home Energy Assistance Payment (LIHEAP) at the time of application for FAP or within 12 months prior to the application date. (Exhibit A, pp. 4 and 108-115)
11. The Department included a heat and utility expense in Petitioner's FAP budget during the overissuance period of June 2019 through May 2020. (Exhibit A, pp. 22-55)
12. A Quality Control (QC) Audit discovered that Petitioner did not have a heat and utility expense during the overissuance period. (Exhibit A, p. 3)
13. Petitioner received FAP benefits of \$187.00 per month for June 2019 through July 2019; \$183.00 per month for August 2019 through September 2019; \$179.00 per month for October 2019 through December 2019; \$176.00 per month for January 2020 through May 2020; and supplements of \$18.00 per month for March 2020 through May 2020. (Exhibit A, pp. 57-58)

14. The Department determined that Petitioner received a total of \$2,157.00 of FAP benefits but was only eligible for \$267.00 of FAP benefits from June 2019 through May 2020. (Exhibit A, pp. 79-103)
15. On July 9, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing her that a \$1,890.00 overissuance of FAP benefits occurred from June 1, 2019, through May 31, 2020, and would be recouped. (Exhibit A, pp. 116-121)
16. On September 3, 2020, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 8-9)

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) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq*, and Mich Admin Code, R 400.3001 through 400.3011.

For FAP, a shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, (April 1, 2019), p. 13. Heat and utility expenses can also be included as allowed by policy. The heat/utility (h/u) standard covers all heat and utility costs including cooling, except actual utility expenses; for example, installation fees etc. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. BEM 554, p. 15. A FAP group which has a heating expense or contributes to the heating expense separate from rent, mortgage or condominium/maintenance payments must use the h/u standard. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. Further, FAP groups that receive a HHC or LIHEAP payment of greater than \$20.00 in the month of application or in the immediately preceding 12 months qualify for the h/u standard. BEM 554 pp. 15-17. LIHEAP payments may include State Emergency Relief (SER) energy related payments or Michigan Energy Assistance Program (MEAP) payments. BEM 554 p. 21.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, October 1, 2018, p. 1. An agency error is caused by incorrect action (including delayed or no action) by Department staff

or Department processes. For FAP, the Department is to pursue agency errors when the estimated amount is \$250.00 or greater. BAM 700, p. 5.

In this case, the Department acknowledged that it erred by including the h/u standard in Petitioner's FAP budget during the overissuance period. Petitioner did not report any heating/cooling expense, or receipt of HHC/SER/MEAP/LIHEAP on the [REDACTED], 2018 FAP application, during the August 7, 2018 interview for FAP, or on the June 10, 2019 Mid-Certification Contact Notice. (Exhibit A, pp. 11-20) Accordingly, the Department should not have included the heat and utility standard in Petitioner's FAP budget during the overissuance period. (Exhibit A, pp. 22-55)

The Department alleges that this error led to a \$1,890.00 overissuance of FAP benefits that occurred from June 1, 2019, through May 31, 2020, which must be recouped. (Exhibit A, pp. 79 and 116-121) Petitioner received FAP benefits of \$187.00 per month for June 2019 through July 2019; \$183.00 per month for August 2019 through September 2019; \$179.00 per month for October 2019 through December 2019; \$176.00 per month for January 2020 through May 2020; and supplements of \$18.00 per month for March 2020 through May 2020. (Exhibit A, pp. 57-58) The Department determined that Petitioner received a total of \$2,157.00 of FAP benefits, but was only eligible for \$267.00 of FAP benefits from June 2019 through May 2020. (Exhibit A, pp. 79-103)

Petitioner testified that she has a portable air conditioning unit she uses every summer and she pays an extra \$15.00 or \$20.00 because it adds to the electric bill during those months. However, Petitioner indicated that she did not report this to the Department. Petitioner might have mentioned it to one person in conversation, but that would have been at the beginning of 2020. (Petitioner Testimony) The Recoupment Specialist testified that she reviewed the case record and did not find any contact notes or anything else documenting that Petitioner reported a cooling expense, such as paying extra to use a portable air conditioning unit. (Recoupment Specialist Testimony)

Overall, the evidence was not sufficient to establish that a cooling expense had been reported to the Department that would have supported including the h/u standard in Petitioner's FAP budgets. The Department's error resulted in issuances of ongoing FAP benefits each month in amounts greater than Petitioner was actually eligible for.

However, it is unclear that an overissuance of FAP benefits actually occurred in March, April, or May 2020. It is noted that the FAP supplements that were issued to Petitioner for March, April and May 2020 are not included in the Department's determination of the amount of FAP benefits Petitioner received or which she was eligible for. (Exhibit A, pp. 57-58 and 79)

Due to COVID-19, supplemental FAP benefits are being issued for some months to households currently receiving FAP benefits to bring the case to the maximum monthly amount for the group size. A Memorandum from the Economic Stability Administration (ESA) indicates the approval was initially for two months, March 2020 and April 2020. Subsequently, approvals were made on a month by month basis and Michigan was

approved to issue the additional benefits for additional months, including May 2020. The Memorandum is clear that this is a supplemental emergency allotment, which does not change the eligibility determination. ESA 2020-15, as updated September 8, 2020.

The Department does not appear to be seeking recoupment of any of the supplemental FAP benefits that were issued. (Exhibit A, pp. 57-58 and 79) In this case, the Department determined that Petitioner was still eligible for at least some amount of FAP for March, April, and May 2020. (Exhibit A, pp. 57-58 and 79) Accordingly, it appears that any amount the ongoing FAP allotment was reduced by (due to re-calculating the FAP budget without the h/u standard) would have instead been issued as a supplemental FAP benefit. Therefore, the alleged overissuance of \$155.00 for each month for March, April, and May 2020, should be removed because the Department does not appear to be seeking recoupment of any of the supplemental FAP benefits that were issued.

The Department erred by including the h/u standard in Petitioner's FAP budgets when Petitioner reported she did not pay for any utilities (not included in rent) and did not pay an extra fee for air conditioning if utilities are included in rent; and Petitioner had not received more than \$20.00 in HHC/SER energy payments/LIHEAP/MEAP. The Department's error resulted in a \$1,425.00 overissuance of FAP benefits from June 1, 2019, through February 28, 2020.

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 an overissuance of FAP benefits that must be recouped, however the amount of the overissuance should be reduced to \$1,425.00 for the period of June 1, 2019, through February 28, 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. Reduce the overissuance to \$1,425.00 for a of period June 1, 2019, through February 28, 2020, and initiate recoupment/collection procedures in accordance with Department policy.



CL/ml

Colleen Lack
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

Kimberly Myers
Marquette County DHHS – via electronic
mail

BSC1 – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

Petitioner

██████████ – via first class mail

██████████
██████████ MI ██████████