



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: December 15, 2020
MOAHR Docket No.: 20-006717
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 December 2, 2020. [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Kathleen Zewatsky, Recoupment Specialist.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-66.

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. A June 25, 2018, Redetermination indicates that Petitioner was receiving FAP for a household of four, Petitioner and her three daughters [REDACTED] with an address of [REDACTED], MI. (Exhibit A, pp. 57-64)
2. A July 3, 2018, Notice of Case Action shows that Petitioner was approved for FAP from August 2018 through July 2019 for a household of four, Petitioner and her three daughters [REDACTED], with an address of [REDACTED] MI. A budget summary showed the income utilized in determining the groups eligibility for FAP. The Notice also advised Petitioner of her responsibility to

report changes to the Department. A Change Report form was also sent to Petitioner. (Exhibit A, pp. 51-56)

3. A March 2019, FEE investigation showed that [REDACTED] was living in Petitioner's home and receiving Unemployment Compensation Benefits. [REDACTED] is the father of one of Petitioner's daughters, [REDACTED] (Exhibit A, pp 49-50)
4. The Department failed to add [REDACTED] to Petitioner's case after the FEE investigation. (Exhibit A, p. 3)
5. An Unemployment Compensation Search report showed that [REDACTED] with an address of [REDACTED] MI, received unemployment compensation benefits for the weeks ending January 12, 2019 through February 2, 2019, and April 6, 2019 through the week ending July 20, 2019. (Exhibit A, pp. 28-29)
6. The Department also discovered unreported income from Petitioner and her daughter [REDACTED] which had not been included in the FAP budgets.
7. An Earning Request from [REDACTED] showed that Petitioner was employed there from March 28, 2019 through April 28, 2019. Petitioner's gross earnings were documented. (Exhibit A, pp. 35-36)
8. An Earning Request from [REDACTED] showed that [REDACTED] was employed there from March 28, 2019 through June 4, 2019. [REDACTED] gross earnings were documented. (Exhibit A, pp. 37-38)
9. A report from The Work Number documented that Petitioner was employed by [REDACTED] from July 10, 2019 through August 15, 2019. Petitioner's earnings were documented. (Exhibit A, pp. 40-41)
10. A report from The Work Number documented that Petitioner was employed by [REDACTED] from May 5, 2019 through June 28, 2019. Petitioner's earnings were documented. (Exhibit A, pp. 42-43)
11. A report from The Work Number documented that AP was employed by [REDACTED] as of June 4, 2019. AP's earnings were documented. (Exhibit A, pp. 45-48)
12. Petitioner's FAP case closed on August 1, 2019 because a Redetermination was not returned. (Exhibit A, p. 3)
13. Petitioner received FAP benefits of \$602.00 per month for May 2019 through July 2019. (Exhibit A, p. 15)
14. The Department determined that Petitioner received a total of \$1,806.00 of FAP benefits but was not eligible for any FAP benefits from May 2019 through July 2019. (Exhibit A, pp. 16-24)

15. On October 6, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing her that a \$1,806.00 overissuance of FAP benefits occurred from May 1, 2019, through July 31, 2019, and would be recouped. (Exhibit A, pp. 8-9)
16. On October 23, 2020, the Department received Petitioner's request for a hearing protesting the recoupment of 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.

Pursuant to BAM 105, clients have a responsibility to cooperate with the Department in determining initial and ongoing eligibility. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, January 1, 2019, p. 9. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes changes with persons in the home as well as any changes with income. (BAM 105, pp. 11-12)

For FAP, the Department will act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220, January 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.

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 MDHHS staff or department processes, such as when available information was not used. Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 5. 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. 7.

In this case, there were errors by both the Department and Petitioner. The Department failed to add [REDACTED] to Petitioner's FAP case pursuant to the FEE investigation. The Department asserts that Petitioner erred by failing to report income from employment for Petitioner and her daughter [REDACTED]. However, as the agency error occurred earlier than the unreported earnings, the Department categorized the overissuance as an agency error. (Exhibit A, p. 16; Recoupment Specialist Testimony)

The FEE investigation report documents that during a March 6, 2019, contact, Petitioner acknowledged that [REDACTED] recently moved back into the home. (Exhibit A, p. 49) [REDACTED] was a mandatory group member because he is the father of one of the children in the home, [REDACTED] (Exhibit A, p. 49) Accordingly, [REDACTED] should have been added to Petitioner's FAP case at that time and his income should have been included in the FAP budget. An Unemployment Compensation Search report showed that [REDACTED] with an address of [REDACTED] MI, received unemployment compensation benefits for the weeks ending January 12, 2019 through February 2, 2019, and April 6, 2019 through the week ending July 20, 2019. (Exhibit A, pp. 28-29)

The Department also verified income from employment for Petitioner and her daughter, [REDACTED] during the overissuance period. An Earning Request from [REDACTED] showed that Petitioner was employed there from March 28, 2019 through April 28, 2019. Petitioner's gross earnings were documented. (Exhibit A, pp. 35-36) An Earning Request from [REDACTED] showed that [REDACTED] was employed there from March 28, 2019 through June 4, 2019. [REDACTED] gross earnings were documented. (Exhibit A, pp. 37-38) A report from The Work Number documented that Petitioner was employed by [REDACTED] from July 10, 2019 through August 15, 2019. Petitioner's earnings were documented. (Exhibit A, pp. 40-41) A report from The Work Number documented that Petitioner was employed by [REDACTED] from May 5, 2019 through June 28, 2019. Petitioner's earnings were documented. (Exhibit A, pp. 42-43) A report from The Work Number documented that AP was employed by [REDACTED] as of June 4, 2019. [REDACTED] earnings were documented. (Exhibit A, pp. 45-48)

Petitioner asserted that [REDACTED] was not living with her during the overissuance period. They were going through a split up. [REDACTED] just received some mail there, and some mail was sent to his parent's home. Petitioner acknowledged that she was unable to provide any proof that [REDACTED] was not living there. Prior to the hearing, Petitioner was advised by the Department to get something from [REDACTED] parents in writing stating that he was staying there during the relevant months. However, Petitioner explained she is not on good terms with [REDACTED] and his family and they would not work with her. (Petitioner Testimony)

Similarly, Petitioner testified that she always reported changes in income to the Department. However, she could not recall how she reported the employment and income changes in 2019. Petitioner could not recall that far back what was going on in their situation, who was working, who was not working, or who was laid off during that time. (Petitioner Testimony)

Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits. While Petitioner testified that [REDACTED] was not living with her during the overissuance period, the case record shows that during a March 6, 2019, contact, Petitioner acknowledged that [REDACTED] recently moved back into the home. (Exhibit A, p. 49) If [REDACTED] then moved back out, Petitioner was responsible to report this change in household composition to the Department within 10 days. Additionally, the Unemployment Compensation Search report showed that [REDACTED] with an address of [REDACTED] MI, received unemployment compensation benefits for the weeks ending January 12, 2019 through February 2, 2019, and April 6, 2019 through the week ending July 20, 2019. (Exhibit A, pp. 28-29) As Petitioner acknowledged, there is no documentary evidence to support her testimony that [REDACTED] was not actually living in the home during the relevant months. Further, the evidence of record does not support Petitioner's assertions that she reported the employment and income changes for herself and her daughter during the relevant months. The Department re-calculated the FAP budgets to include the income from [REDACTED] Petitioner, and her daughter [REDACTED]. These budgets show that Petitioner's group was not eligible for FAP benefits from May 2019 through July 2019. Therefore, Petitioner's FAP group received an overissuance of \$1,806.00 of FAP benefits during these months. (Exhibit A, pp. 16-24)

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 \$1,806.00 overissuance of FAP benefits that must be recouped.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

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 Department Rep.

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

OIG – via electronic mail

L. Bengel – via electronic mail

DHHS

Tamara Little
Jackson County DHHS – via electronic mail

Petitioner

[REDACTED]
[REDACTED], MI [REDACTED]