



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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MI [REDACTED]

Date Mailed: December 21, 2020
MOAHR Docket No.: 20-006896
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 10, 2020. [REDACTED] the Petitioner, appeared on his own behalf. The Department of Health and Human Services (Department) was represented by Latrisha Tartt, Recoupment Specialist.

During the hearing proceeding the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-31.

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. Petitioner's prior FAP case closed due to a failure to submit verifications timely. (Exhibit A, pp. 1 and 10)
2. Petitioner requested a hearing contesting the closure of FAP benefits, which were reinstated while awaiting the outcome of the hearing. (Exhibit A, pp. 1 and 10)
3. On September 29, 2020, an Order of Dismissal was issued for Michigan Office of Administrative Hearings and Rules (MOAHR) Docket No. 20-005452 based on Petitioner having failed to participate. (Exhibit A, pp. 16-17)

4. Petitioner received regular ongoing FAP benefits of \$768.00 per month for September 2020 and October 2020. (Exhibit A, p. 15)
5. The Department determined that Petitioner received a total of \$1,536.00 of FAP benefits but was not eligible for any FAP benefits from September 2020 through October 2020. (Exhibit A, pp. 12)
6. On October 20, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing him that a \$1,536.00 overissuance of FAP benefits occurred from September 1, 2020, through October 31, 2020, and would be recouped. (Exhibit A, pp. 11-12)
7. On October 30, 2020, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 5-8)

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.

BAM 600 addresses the continuation of program benefits pending an administrative hearing:

CONTINUATION OF PROGRAM BENEFITS PENDING ADMINISTRATIVE HEARING

Timely Hearing Request

All Programs

A **timely hearing request** is a request received by the department within 10 days of the date the notice of case action was issued. When the 10th calendar day is a Saturday, Sunday, holiday, or other non-workday, the request is timely if received by the following workday.

While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. Upon receipt of a timely hearing request, reinstate program benefits to the former level for a hearing request filed because of a negative action.

For **FAP only**, these actions apply **only** if the benefit period has **not** expired.

Exception #1: For **all programs**, do **not** restore benefits reduced or terminated due to a mass update required by state or federal law **unless** the issue contested is that the benefits were improperly computed.

Exception #2: For **all programs**, do **not** restore program benefits when the client or AHR specifically states in writing that continued assistance pending the hearing decision is **not** requested.

Exception #3: For **FAP only**, if a client or AHR disputes the computation of supplemental benefits, issue the supplement as originally computed.

BAM 600, January 1, 2020, pp. 25-25
(Underline added by ALJ)

BAM 600 also addresses recouping program benefits:

Recouping Program Benefits

All Programs

If a hearing request is filed timely and program benefits are restored, recoup overissuances if:

- The request is later withdrawn.
- MOAHR denies the request.
- The client or AHR fails to appear for the hearing and MOAHR issues an order of dismissal.
- The hearing decision upholds the department's action.

Calculate the overissuance from the date the negative action would have taken effect until the date the negative action is subsequently implemented.

If an administrative recoupment is processed to recover an overissuance due to a hearing, send a timely notice of case action. In this situation, the client is entitled to a hearing solely on the issue of the recoupment amount.

BAM 600, January 1, 2020, pp. 27-28
(Underline added by ALJ)

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.

In this case, Petitioner's prior FAP case closed due to a failure to submit verifications timely. Petitioner requested a hearing contesting the closure of FAP benefits, which were reinstated while awaiting the outcome of the hearing. (Exhibit A, pp. 1 and 10) However, Petitioner failed to appear for the hearing. On September 29, 2020, an Order of Dismissal was issued for MOAHR Docket No. 20-005452 based on Petitioner having failed to participate. (Exhibit A, pp. 16-17)

Petitioner received regular ongoing FAP benefits of \$768.00 per month for September 2020 and October 2020. (Exhibit A, p. 15) The Department determined that Petitioner received a total of \$1,536.00 of FAP benefits but was not eligible for any FAP benefits from September 2020 through October 2020. (Exhibit A, pp. 12) Accordingly, on October 20, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing him that a \$1,536.00 overissuance of FAP benefits occurred from September 1, 2020, through October 31, 2020, and would be recouped. (Exhibit A, pp. 11-12)

On October 30, 2020, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 5-8) In the hearing request and in his testimony, Petitioner addressed why he failed to appear for the hearing and why he believes the cancellation of benefits and overissuance determination are unwarranted. (Exhibit A, pp. 5-8; Petitioner Testimony) However, pursuant in the above cited BAM 600 policy, there is only jurisdiction for an administrative hearing regarding the recoupment amount. Petitioner testified that he had another administrative hearing scheduled with MOAHR on December 10, 2020, that may address reinstatement of FAP benefits all the way back to the closure, MOAHR Docket No. 20-006867. However, on December 16, 2020, an Order of Dismissal was issued for MOAHR Docket No. 20-006867 based on a lack of jurisdiction.

Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits. Petitioner requested an administrative hearing regarding the Department's determination to close his prior FAP case. FAP benefits were continued pending the administrative hearing. On September 29, 2020, an Order of Dismissal was issued for MOAHR Docket No. 20-005452 based on Petitioner having failed to participate. Petitioner received regular ongoing FAP benefits of \$768.00 per month for September 2020 and October 2020. Therefore, Petitioner received an

overissuance of \$1,536.00 of FAP benefits during the months that benefits were continued pending the administrative hearing.

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 \$1,536.00 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

DHHS

Tamara Morris
Genesee (Union St) County DHHS – via
electronic mail

BSC2 – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

Petitioner

██████████ – via first class mail

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