



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: January 19, 2021
MOAHR Docket No.: 20-007538
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 January 6, 2021. [REDACTED] the Petitioner, appeared on her own behalf. [REDACTED] husband, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Jennifer Braxmaier, Recoupment Specialist.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-60.

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 [REDACTED] 2020, Petitioner applied for FAP for a group of three. Petitioner reported only herself and her two sons in the home. (Exhibit A, pp. 4-10)
2. During an April 3, 2020 interview, Petitioner reported only herself and the two children in the home. Petitioner reported that [REDACTED] left the home February 1, 2020. (Exhibit A, pp. 11-12)
3. On April 3, 2020, a Notice of Case Action was issued approving FAP for a group of three, Petitioner and her sons, effective April 2, 2020. The notice indicated that

- ██████████ was not a group member because he was not in the home. (Exhibit A, pp. 13-18)
4. An August 3, 2020 partially completed a Semi-Annual Contact Report indicated no changes in household members or income. (Exhibit A, pp. 21-25)
 5. On August 6, 2020, Petitioner completed a Renew Benefits indicating no changes in household members or income. (Exhibit A, pp. 26-27)
 6. On September 30, 2020, Petitioner completed a change report regarding her marriage to ██████████ on September 9, 2020 and adding him to the household. A copy of the marriage certificate was provided. (Exhibit A, pp. 28-31)
 7. On October 17, 2020, Petitioner provided a written statement to the Department regarding ██████████ being a fulltime caretaker for her two children since July 1, 2019. The statement was signed by both Petitioner and ██████████. (Exhibit A, p. 32)
 8. On October 19, 2020, Petitioner provided a written statement to the Department “to confirm ██████████ has been living at [her] house as well as eating [her] food since December 13, 2019.” The statement was signed by both Petitioner and ██████████. (Exhibit A, p. 33)
 9. On October 19, 2020, Petitioner provided a second written statement to the Department “to formally confirm the residency of ██████████. ██████████ has been living uninterruptedly at the address stated above during the last eleven (11) months from the date of this letter.” Petitioner also confirmed that she had been living at that address since December 13, 2019. The statement was signed by both Petitioner and ██████████ (Exhibit A, p. 34)
 10. On October 21, 2020, a Verification of Employment was completed by the HR coordinator at ██████████. ██████████ was employed from March 16, 2020 to September 3, 2020, and his earnings were documented. (Exhibit A, pp. 35-39)
 11. Petitioner received FAP benefits totaling \$██████████ from April 1, 2020 through August 31, 2020. (Exhibit A, p. 40)
 12. The Department determined that Petitioner was only eligible for \$633.00 in FAP benefits from April 1, 2020 through August 31, 2020. (Exhibit A, pp. 40-52)
 13. On November 4, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing her that a \$1,912.00 overissuance of FAP benefits occurred from April 1, 2020 through August 31, 2020 and would be recouped. (Exhibit A, pp. 53-54)
 14. On November 16, 2020, the Department received Petitioner’s request for a hearing protesting the recoupment of FAP benefits. (Hearing Request)

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, October 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. 11-13)

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, April 1, 2020, 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. 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, the Department asserts that Petitioner erred by not accurately reporting the household composition and income to the Department.

On April 2, 2020, Petitioner applied for FAP for a group of three. Petitioner reported only herself and her two sons in the home. (Exhibit A, pp. 4-10) During an April 3, 2020 interview, Petitioner reported only herself and the two children in the home. Petitioner reported that [REDACTED] left the home February 1, 2020. (Exhibit A, pp. 11-12) Accordingly, on April 3, 2020, a Notice of Case Action was issued approving FAP for a group of three, Petitioner and her sons, effective April 2, 2020. The notice indicated that [REDACTED] was not a group member because he was not in the home. (Exhibit A, pp. 13-18)

An August 3, 2020 partially completed a Semi-Annual Contact Report indicated no changes in household members or income. (Exhibit A, pp. 21-25) On August 6, 2020, Petitioner completed a Renew Benefits indicating no changes in household members or income. (Exhibit A, pp. 26-27)

On September 30, 2020, Petitioner completed a change report regarding her marriage to [REDACTED] on September 9, 2020 and adding him to the household. A copy of the marriage certificate was provided. (Exhibit A, pp. 28-31)

However, on October 17, 2020, Petitioner provided a written statement to the Department regarding [REDACTED] being a fulltime caretaker for her two children since July 1, 2019. The statement was signed by both Petitioner and [REDACTED]. (Exhibit A, p. 32) On October 19, 2020, Petitioner provided a written statement to the Department "to confirm [REDACTED] has been living at [her] house as well as eating [her] food since December 13, 2019." The statement was signed by both Petitioner and [REDACTED]. (Exhibit A, p. 33) On October 19, 2020, Petitioner provided a second written statement to the Department "to formally confirm the residency of [REDACTED] [REDACTED] has been living uninterruptedly at the address stated above during the last eleven (11) months from the date of this letter." Petitioner also confirmed that she had been living at that address since December 13, 2019. The statement was signed by both Petitioner and [REDACTED]. (Exhibit A, p. 34)

On October 21, 2020, a Verification of Employment was completed by the HR coordinator at [REDACTED]. [REDACTED] was employed from March 16, 2020 to September 3, 2020 and his earnings were documented. (Exhibit A, pp. 35-39)

Petitioner and her husband asserted that he was not living in the home during the overissuance period. Rather, he was living with his mother. Petitioner and her husband asserted that the October 2020 written statements were only to verify that he was a caregiver for Petitioner's children because she was working 60 hours per week at the time. (Petitioner and Husband Testimony)

Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits. While Petitioner and her husband asserted that he was not living in the home during the overissuance period, the written statements they provided in October 2020 were very specific that he had been living in the home since December 13, 2019 as well as sharing the household food. (Exhibit A, pp. 33-34) Petitioner was responsible to report to the Department all household members at application and when providing information for review of the case. Based on the October 2020 written statements, [REDACTED] should have been listed as a household member by Petitioner and included in the FAP group. Further, his income should have been included in the FAP budget because he was living in the home and sharing the household food. Accordingly, the Department re-calculated the FAP budgets to include [REDACTED] income. These budgets show that Petitioner's group was only eligible for \$633.00 in FAP benefits from April 1, 2020 through


August 31, 2020. (Exhibit A, pp. 40-52) Therefore, Petitioner's FAP group received an overissuance of \$1,912.00 of FAP benefits during these months. (Exhibit A, pp. 40-52)

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 \$1,912.00 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

Karen Painter
Branch County DHHS – via electronic mail

MDHHS OIG – via electronic mail

L. Bengel – via electronic mail

DHHS Department Rep.

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

Petitioner

██████████ – via first class mail
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