



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 29, 2021
MOAHR Docket No.: 20-007569
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 12, 2020. [REDACTED], the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Mary Peterson, Recoupment Specialist.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-97; and a screenshot of the Electronic Case File was admitted as Exhibit B, p. 1. Petitioner's additional documentation was admitted as follows: verification of Unemployment Compensation Benefits (UCB) Exhibit 1, pp. 1-3; verification of Hope Network payroll Exhibit 2, p. 1; and verification of [REDACTED] payroll Exhibit 3, p. 1.

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 [REDACTED], 2019, Petitioner submitted an assistance application for FAP for a household of three. Petitioner reported a job at [REDACTED] ending. (Exhibit A, pp. 9-16)
2. During a September 10, 2020, interview, Petitioner provided more information about the job at [REDACTED] that ended. (Exhibit A, pp. 17-19)

3. On September 10, 2019, a Notice of Case Action and Simplified Six Month Review were mailed to Petitioner informing her of the expedited FAP approval from September 9-30, 2019. The Notice indicated verifications would be needed to receive benefits for the remainder of certification period that ran through August 31, 2020 and that a Verification Checklist was sent separately. (Exhibit A, pp. 20-27)
4. The Department received an October 1, 2019, email from the Human Resources/Payroll Manager and a copy of the September 17, 2019, pay stub as verification of final pay and loss of employment from [REDACTED]. (Exhibit A, pp. 28- 30)
5. On October 4, 2019, a Notice of Case Action was mailed to Petitioner regarding the FAP approval from October 1, 2019 through August 31, 2020. The Notice also advised Petitioner of her responsibility to report any changes in circumstances that may affect eligibility within 10 days. (Exhibit A, pp. 31-35)
6. On November 5, 2019, Petitioner provided an email from her employer, [REDACTED], verifying that she was employed full time. (Exhibit A, pp. 3 and 36-37)
7. On November 26, 2019, a New Hire Client Notice was issued to Petitioner requesting verification of employment with [REDACTED] with a due date of December 6, 2019. (Exhibit A, pp. 38-39)
8. On December 5, 2019, a Quick Note was issued clarifying that Petitioner had reported the start of the new job and all that was needed was the first 30 days of check stubs. (Exhibit A, p. 40)
9. A report from The Work Number verified Petitioner's rate of pay, how often she is paid, and her fist pay date. The Department erred in their calculation and projected a monthly income of [REDACTED]. (Exhibit A, pp. 3 and 62; Exhibit B, p. 1; Recoupment Specialist Testimony)
10. On December 5, 2019, a Notice of Case Action and Simplified Six Month Review were mailed to Petitioner informing her of the FAP approval from December 1, 2019 through December 31, 2020. The budget summary showed that the Department included [REDACTED] for earned income. The Notice also advised Petitioner of her responsibility to report changes. Specifically, Petitioner was a simplified reporter and was only required to report when the household gross monthly income exceeded [REDACTED]. This change was to be reported by the 10th day of the following month if it occurred. (Exhibit A, pp. 41-47)
11. On January 2, 2020, a Semi-Annual Contact Review form was mailed to Petitioner with a due date of February 1, 2020. This form advised that if Petitioner did not complete, sign, date, and return it to the Department with proof of changes by the due date, the FAP case would close effective February 29, 2020. (Exhibit A, pp. 48-50)

12. Petitioner did not return the Semi-Annual Contact form and was therefore not eligible for FAP as of March 2020. (Exhibit A, pp. 3 and 51; Exhibit B, p. 1; Recoupment Specialist Testimony)
13. Due to a system error, Petitioner's FAP case did not close. (Exhibit A, p. 3; Recoupment Specialist Testimony)
14. During a June 22, 2020, interview, Petitioner reported that she was laid off from [REDACTED] in March and she is receiving UCB. (Exhibit A, pp. 52-53 and 62)
15. The Department requested employment verification from [REDACTED] but the employer failed to provide the requested information. (Exhibit A, pp. 3, 61, and 83-85; Recoupment Specialist Testimony)
16. A Consolidated Inquiry report and Employee Wage History by Recipient ID report show the quarterly wages from [REDACTED]. The Department utilized one third of the quarterly income in the FAP budget for the Inlite10 income. (Exhibit A, pp. 8, 57, and 86)
17. A Consolidated Inquiry report shows Petitioner began receiving UCB starting with the week ending March 21, 2020, and the first pay date was April 4, 2020. (Exhibit A, pp. 54-56)
18. A Consolidated Inquiry report verified child support payments. (Exhibit A, pp. 59-60)
19. Petitioner's FAP case closed effective June 1, 2020. (Exhibit A, p. 61; Recoupment Specialist Testimony)
20. Petitioner received FAP benefits of \$261.00 per month for January and February 2020 and \$509.00 per month for March, April, and May 2020. (Exhibit A, pp. 65 and 90)
21. The Department determined that Petitioner received a total of \$2,049.00 of FAP benefits but was only eligible for \$144.00 of FAP benefits from January 1, 2020 through May 31, 2020. (Exhibit A, pp. 65-76)
22. On November 20, 2020, the Department sent Petitioner a Notice of Overissuance instructing her that a \$1,905.00 overissuance of FAP benefits occurred from January 1, 2020 through May 31, 2020 and would be recouped. (Exhibit A, pp. 92-93)
23. On December 1, 2020, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 6-7)

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. 11-14)

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, 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 erred when projecting the income Petitioner was expected to receive from [REDACTED] and by failing to close Petitioner's FAP case when the Semi-Annual Contact form was not returned. Petitioner erred by failing to timely report all changes with the household income and failing to complete and return the Semi-Annual Contact form. However, the Department categorized the overissuance in this case as an agency error. (Exhibit A, p. 93)

The first part of the overissuance period, January and February 2020, was due to the Department incorrectly projecting Petitioner's income for the new job at [REDACTED] as [REDACTED] per month instead of [REDACTED]. (Recoupment Specialist Testimony) Based on the corrected projected income, Petitioner was only eligible for \$72.00 per month in FAP benefits, rather than the \$261.00 in FAP benefits she actually received. (Exhibit A, pp. 65-69) The verifications included in the Department's exhibits show Petitioner only worked for [REDACTED] for one pay period and had a single pay date of November 15, 2019, with gross earnings of [REDACTED] (Exhibit A, pp. 57 and 77-79) However, there was no evidence that Petitioner timely reported this employment stopping to the Department. Therefore, the projected income would have continued to be included in the January 2020 and February 2020 FAP budgets. Petitioner also worked during the first quarter of 2020 for [REDACTED]. (Exhibit A, pp. 57 and 86) If one third of Petitioner's wages for the first quarter of 2020 from [REDACTED] were considered each month for the January and February 2020 FAP budgets, the overissuance amount would likely have been even greater for these months. (Exhibit A, p. 89) However, it is not clear when the employment with [REDACTED] started. Therefore, it is unclear when this employment should have been reported to the Department and what month this income should have started to be considered in Petitioner's FAP budget. Petitioner testified that she is not disputing the January and February 2020 overissuance determinations. (Petitioner Testimony)

The second part of the overissuance period, March 2020, April 2020, and May 2020, was due to the Department's failure to close Petitioner's FAP case when she failed to return the Semi-Annual Contact form. (Recoupment Specialist Testimony) On January 2, 2020, a Semi-Annual Contact Review form was mailed to Petitioner with a due date of February 1, 2020. This form advised that if Petitioner did not complete, sign, date, and return it to the Department with proof of changes by the due date, the FAP case would close effective February 29, 2020 (Exhibit A, pp. 48-50) Petitioner did not return the Semi-Annual Contact form and was therefore not eligible for FAP as of March 2020. (Exhibit A, pp. 3 and 51; Exhibit B, p. 1; Recoupment Specialist Testimony)

Petitioner testified that she disputed the overissuance determinations for March 2020 and April 2020. Petitioner asserted that she did report that she lost her job in March and filed for UCB. Petitioner asserted that it took six weeks to get her first UCB payment. (Petitioner Testimony) However, this second part of the overissuance period was based on the failure to return the Semi-Annual Contact form, which should have resulted in Petitioner's FAP case closing effective March 1, 2020. Once this was clarified, Petitioner testified that she submitted the Semi-Annual Contact form online on March 19, 2020. (Petitioner Testimony) It is noted that this would still have been after the February 1, 2020 due date. Further, the electronic case record does not show that Petitioner ever submitted the Semi-Annual Contact form. (Exhibit A, pp. 3 and 51; Exhibit B, p. 1; Recoupment Specialist Testimony)

Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits. The overissuance determinations for January 2020 and February 2020 were not disputed. Regarding the March 2020, April 2020, and May 2020 overissuance determinations, the evidence from the case record shows that

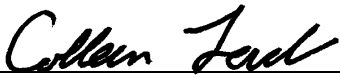
Petitioner never submitted a completed Semi-Annual Contact form. Accordingly, the Department should have closed Petitioner's FAP case effective March 1, 2020. The Department properly determined that the FAP benefits issued for March 2020, April 2020, and May 2020 were an overissuance.

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 \$1,905.00 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

Kimberly Reed
Montcalm County DHHS – via electronic mail

DHHS Department Rep.

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

MDHHS OIG – via electronic mail

L. Bengel – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

Petitioner

██████████ – via first class mail
██████████
██████████ MI ██████████