



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: April 30, 2021
MOAHR Docket No.: 20-008879
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 April 14, 2021. [REDACTED] the Petitioner, appeared on her own behalf. [REDACTED] mother, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by April Ketner, Recoupment Specialist.

During the hearing proceeding, the Department’s Hearing Summary packet was admitted as Exhibit A, pp. 1-78.

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] 2019, Petitioner applied for FAP and cash assistance. Petitioner reported her son [REDACTED] was employed by [REDACTED] 20 hours per week at \$[REDACTED] per hour. It was noted that hours were reduced because of weather, the work is outside, and there would be no more work after this month. (Exhibit A, pp. 72-78)
2. On [REDACTED] 2019, Petitioner submitted verification from [REDACTED] stating [REDACTED] worked for him 20 hours at \$[REDACTED] an hour. (Exhibit A, p. 27)

3. On November 7, 2019, Petitioner submitted verification from [REDACTED] stating [REDACTED] worked for him 20 hours at \$[REDACTED] an hour. (Exhibit A, pp. 26)
4. On November 14, 2019, a Notice of Case Action was issued to Petitioner regarding the FAP approval for the household size of two, Petitioner and [REDACTED]. The Notice indicated the household income was \$[REDACTED]. 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 \$1,832.00. (Exhibit A, pp. 65-69)
5. On November 14, 2020, a Simplified Six Month Review was issued to Petitioner, further explaining the simplified review process. This advised that instead of coming in for a review every six months, Petitioner would receive a Semi-Annual Contact Report form in the mail to complete. In part, Petitioner would be required to provide information about changes in household income of more than \$100.00. (Exhibit A, pp. 70-71)
6. On February 25, 2020, the Department Received a Semi-Annual Contact Report from Petitioner. The household members were Petitioner and [REDACTED]. Petitioner reported that the household's monthly gross income had not changed by more than \$100.00 from the \$[REDACTED] used in the FAP budget and that no one had a change in earnings because they changed, started, or stopped a job. (Exhibit A, pp. 61-64)
7. A February 25, 2020, Consolidated Inquiry showed a new hire and wages for [REDACTED] being employed with [REDACTED]. The Department failed to request income verification for this employment. (Exhibit A, p. 3 and 9-10)
8. On February 26, 2020, the Department received a Renew Benefits for FAP from Petitioner. Petitioner reported [REDACTED]'s job with [REDACTED] was unchanged income and employment. Petitioner reported that child support for [REDACTED] ended May 31, 2019, because [REDACTED] graduated and turned 18. (Exhibit A, pp. 59-60)
9. On February 26, 2020, a Notice of Case Action and Simplified Six Month Review were issued to Petitioner approving FAP for the household of two from February 1, 2020 to September 30, 2020. The Notice indicated the household income was \$[REDACTED]. Petitioner was also advised of her responsibility to report changes. (Exhibit A, pp. 52-58)
10. On May 26, 2020, Petitioner applied for State Emergency Relief (SER). Petitioner reported [REDACTED] was working for [REDACTED] 20 hours per week doing odd jobs and earning \$[REDACTED] per week. A November 5, 2019, note from [REDACTED] was included verifying [REDACTED]'s employment and earnings. (Exhibit A, pp. 25 and 47-51)
11. On May 26, 2020, a Notice of Case Action was issued to Petitioner stating the FAP case would close effective July 1, 2020, due to gross income in excess of program limits. (Exhibit A, pp. 42-46)

12. A report from The Work Number documents that [REDACTED] started working for [REDACTED] on November 13, 2019, and his first pay was November 22, 2019. [REDACTED]'s earnings through July 17, 2020, were documented. (Exhibit A, pp. 28-29)
13. Petitioner received FAP benefits of \$ [REDACTED] per month for April 1, 2020 through June 30, 2020. (Exhibit A, p. 11)
14. The Department determined that for April 1, 2020 through June 30, 2020, Petitioner received a total of \$ [REDACTED] of FAP benefits, but was not eligible any FAP benefits. (Exhibit A, pp. 12-24)
15. On September 25, 2020, the Department sent Petitioner a Notice of Overissuance instructing her that a \$ [REDACTED] overissuance of FAP benefits occurred from April 1, 2020 through June 30, 2020 and would be recouped. (Exhibit A, pp. 36-41)
16. On October 19, 2020, the Department received Petitioner's request for a hearing, contesting 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, October 1, 2019, p. 9. For FAP, simplified reporting households must report when the household monthly income exceeds the monthly gross income limit for its household size. 7 CFR 273.12(a)(5)(ii)(G)(1) Similarly, Department policy regarding FAP simplified reporting states:

Simplified reporting groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. **No** other change reporting is required.

Exception: Simplified Reporting groups must report lottery and gambling winnings of \$3,500 or more.

If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group's SR income limit; see RFT 250, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR.

Note: Changes known to the department must be acted on even though the client is required to report only if the group's total gross income exceeds the SR income limit for their group size.

BAM 200, January 1, 2020, p. 1.

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, the Department determined that a FAP OI occurred due to agency error. Specifically, a February 25, 2020, Consolidated Inquiry showed a new hire and wages for [REDACTED] being employed with [REDACTED]. The Department failed to request income verification for this employment. (Exhibit A, p. 3 and 9-10) Petitioner also failed to report this employment income for a household member on the February 25, 2020 Semi-Annual Contact Report, February 26, 2020 Renew Benefits, and May 26, 2020 application for SER. Rather, Petitioner reported [REDACTED] continued employment with [REDACTED] (Exhibit A, pp. 25 and 59-64 and 47-51)

On [REDACTED] 2019, Petitioner applied for FAP and cash assistance. Petitioner reported her son [REDACTED] was employed by [REDACTED] 20 hours per week at \$[REDACTED] per hour. It was noted that hours were reduced because of weather, the work is outside, and there would be no more work after this month. (Exhibit A, pp. 72-78)

On [REDACTED] 2019, Petitioner submitted verification from [REDACTED] stating [REDACTED] worked for him 20 hours at \$[REDACTED] an hour. (Exhibit A, p. 27)

On November 7, 2019, Petitioner submitted verification from [REDACTED] stating [REDACTED] worked for him 20 hours at \$[REDACTED] an hour. (Exhibit A, pp. 26)

On November 14, 2019, a Notice of Case Action was issued to Petitioner regarding the FAP approval for the household size of two, Petitioner and [REDACTED]. The Notice indicated the household income was \$[REDACTED]. 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 \$1,832.00. (Exhibit A, pp. 65-69)

On November 14, 2020, a Simplified Six Month Review was issued to Petitioner, further explaining the simplified review process. This advised that instead of coming in for a review every six months, Petitioner would receive a Semi-Annual Contact Report form in the mail to complete. In part, Petitioner would be required to provide information about changes in household income of more than \$100.00. (Exhibit A, pp. 70-71)

On February 25, 2020, the Department Received a Semi-Annual Contact Report from Petitioner. The household members were Petitioner and [REDACTED]. Petitioner reported that the household's monthly gross income had not changed by more than \$100.00 from the \$[REDACTED] used in the FAP budget and that no one had a change in earnings because they changed, started, or stopped a job. (Exhibit A, pp. 61-64)

A February 25, 2020, Consolidated Inquiry showed a new hire and wages for [REDACTED] being employed with [REDACTED]. The Department failed to request income verification for this employment. (Exhibit A, p. 3 and 9-10)

On February 26, 2020, the Department received a Renew Benefits for FAP from Petitioner. Petitioner reported [REDACTED]'s job with [REDACTED] was unchanged income and employment. Petitioner reported that child support for [REDACTED] ended May 31, 2019, because [REDACTED] graduated and turned 18. (Exhibit A, pp. 59-60)

On February 26, 2020, a Notice of Case Action and Simplified Six Month Review were issued to Petitioner approving FAP for the household of two from February 1, 2020 to September 30, 2020. The Notice indicated the household income was \$[REDACTED]. Petitioner was also advised of her responsibility to report changes. (Exhibit A, pp. 52-58)

On [REDACTED] 2020, Petitioner applied for State Emergency Relief (SER). Petitioner reported [REDACTED] was working for [REDACTED] 20 hours per week doing odd jobs and earning \$[REDACTED] per week. A November 5, 2019, note from [REDACTED] was included verifying [REDACTED]'s employment and earnings. (Exhibit A, pp. 25 and 47-51)

On May 26, 2020, a Notice of Case Action was issued to Petitioner stating the FAP case would close effective July 1, 2020, due to gross income in excess of program limits. (Exhibit A, pp. 42-46)

However, a report from The Work Number documents that [REDACTED] started working for [REDACTED] on November 13, 2019, and his first pay was November 22, 2019. [REDACTED] earnings through July 17, 2020, were documented. (Exhibit A, pp. 28-29) Petitioner failed to report this employment income for a household member on the February 25, 2020 Semi-Annual Contact Report, February 26, 2020 Renew Benefits, and May 26, 2020 application for SER. Rather, Petitioner reported [REDACTED] continued employment with [REDACTED] (Exhibit A, pp. 25 and 59-64 and 47-51) However, as noted above the Department failed to request income verification for this employment when it was discovered on the February 25, 2020, Consolidated Inquiry during the February 2020 review of the FAP case. (Exhibit A, p. 3 and 9-10) Therefore, the resulting OI for the time period at issue is considered an agency error.

Petitioner received FAP benefits of \$[REDACTED] per month for April 1, 2020 through June 30, 2020. (Exhibit A, p. 11)

The Department determined that for April 1, 2020 through June 30, 2020, Petitioner received a total of \$[REDACTED] of FAP benefits, but was not eligible FAP during this time period. The Department added the unreported earned income to the FAP budgets, which already included the \$860.00 from the reported income from [REDACTED]'s employment with [REDACTED] Petitioner's group was not eligible for FAP due to income in excess of program limits during the time period at issue. (Exhibit A, pp. 12-24) Therefore, Petitioner received a \$[REDACTED] overissuance of FAP benefits for April 1, 2020 through June 30, 2020.

Petitioner testified that her son stopped working for [REDACTED] when he started working at [REDACTED] (Petitioner Testimony) However, on the February 25, 2020 Semi-Annual Contact Report, February 26, 2020 Renew Benefits, and May 26, 2020 application for SER Petitioner reported [REDACTED] continued employment with [REDACTED] (Exhibit A, pp. 25 and 59-64 and 47-51) Therefore, the Department properly continued to include these earnings in the FAP budgets based on the information available to them. Further, Petitioner has not provided any documentation to verify that [REDACTED]'s employment with [REDACTED] ended.

Petitioner disagrees with the Department policies regarding children up to age 22 being included in the FAP group and counting the gross wages. (Petitioner Testimony) Pursuant to BEM 212 policy, in general, persons who live together and purchase and prepare food together are members of the FAP group. Further, parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, July 1, 2019, pp. 1 and 6. Pursuant to BEM 550, the Department budgets the entire amount of earned and unearned countable income. BEM 550, January 1, 2017, p. 1. As discussed, the Department policy is based on the applicable federal regulations for the Supplemental Nutrition Assistance Program (SNAP). This Administrative Law Judge has no authority to change or make any exceptions to the Department policy or federal regulations. Accordingly, The Department properly included [REDACTED] in Petitioner's FAP group and considered his gross income.

Petitioner also referenced the supplemental FAP benefits being issued due to the pandemic, and indicated she thought this meant there would be no overissuance. (Petitioner Testimony) 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 each additional month thus far. The Memorandum is clear that this is a supplemental emergency allotment, which does not change the eligibility determination. A household is only eligible for a supplement if they were eligible for at least some amount of FAP for the month. Therefore, if the household was not eligible for FAP for the month, there is still an overissuance.

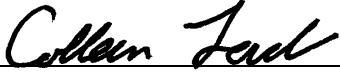
Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits from April 1, 2020 through June 30, 2020. Petitioner's son's income from working at [REDACTED] should have been included in the FAP budget.

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 \$ [REDACTED] 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 Elizabeth Hertel, 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

Amber Gibson
Ingham County DHHS – via electronic
mail

BSC2 – 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
██████████
██████████ MI ██████████