



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: March 1, 2021
MOAHR Docket No.: 21-000227
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 February 24, 2021, from Lansing, Michigan. [REDACTED], Petitioner self-represented at the hearing. The Department of Health and Human Services (Department or Respondent) was represented by Rebecca Smalley, Recoupment Specialist.

Department Exhibits pages 1-78 were admitted as evidence.

ISSUE

Did the Department properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) which 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 submitted a DHHS 1171 assistance application signed by Petitioner acknowledging his rights and responsibilities including repaying overissued FAP benefits even if it was Department error.
2. The Department ran SOLQ inquiry which reported Petitioner was receiving RSDI benefits.
3. On December 7, 2020, an over-issuance referral was received in recoupment.

4. On January 6, 2021, the over-issuance referral was processed.
5. The Recoupment Specialist (RS) found ECF contained the SOLQ that was ran at application. SOLQ clearly reported RSDI income for Petitioner.
6. RS viewed the original BRIDGES budgets. Original budgets reflected no income and shelter obligations.
7. Since the error is the agencies, recoupment can only include the last 12 months of the OI so in this case January 1, 2020-December 31, 2020. The over-issuance budgets were calculated in LOA2 to include the RSDI income for [REDACTED] and shelter obligations were carried over from the original BRIDGES budgets.
8. RS created FAP claim 100007812703 as an agency error in the amount of \$2,136.00. An OI letter series 4358 A-D was mailed by central print to Petitioner's last known address.
9. On January 12, 2021, Eligibility Specialist E. Edgar noted in BRIDGES case comments that on January 11, 2021, Petitioner left message regarding the over issuance letter that he received and her verbally requested a hearing. The Worker also noted that hearing request was forwarded to Hearings Coordinator.
10. On January 20, 2021, the Assistance Payments Supervisor entered case comments that a prehearing conference was held with Petitioner.
11. Petitioner believes that he should not have to pay back the worker error. Petitioner wants to proceed with the hearing. Sent to coordinator.
12. On January 29, 2021, the Hearing Request was received in recoupment.
13. The Department is requesting that an order for repayment of alleged OI FAP benefits as an agency error for January 1, 2020 – December 31, 2020, in the amount of \$2,136.00 be issued.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Pertinent Department policy dictates:

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1 (1/1/2016).

Recoupment is a MDHHS action to identify and recover a benefit over issuance. A recoupment specialist (RS) is the specialist assigned to process over issuances and act as liaison with OIG, reconciliation and recoupment section (RRS), and other personnel involved with recoupment and collections. BAM 700 page 2

An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or Department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between Department divisions such as services staff.
- Data exchange reports were not acted upon timely (wage match, new hires, BENDEX, etc.).

If unable to identify the type, record it as an agency error. FIP, SDA, CDC and FAP Agency errors are not pursued if the estimated amount is less than \$250 per program. BEM 700, page 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. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, and any of the following occurred:

- The hearing request is later withdrawn.
- MAHS denies the hearing request.

- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.
- The hearing decision upholds the Department's actions; see BAM 600. BAM 700 page 7

When a potential over issuance is discovered the following actions must be taken:

1. Immediately correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
2. Obtain initial evidence that an over issuance potentially exists.
3. Determine if it was caused by Department, provider or client actions.
4. Refer any over issuances needing referral to the RS within 60 days of suspecting one exists.

Exception: Office of Quality Assurance (OQA) discovered over issuances must be referred to the RS within 7 days of receipt of the OQA findings. OQA has already verified one exists. FIP, SDA, CDC and FAP Within 60 days of suspecting an over issuance exists, complete a DHS-4701, Over issuance Referral, and refer the following over issuances to the RS for your office:

- All client and agency errors over \$250.
- All suspected IPV errors.
- All CDC provider errors BAM 700 page 10.

In this case, Petitioner did receive notice that the Department committed an error when it did not count Petitioner's RSDI income in a timely manner. The over-issuance is based on Department error.

This Administrative Law Judge finds that the Department determined that Petitioner was entitled to receive FAP benefits in the month of April 2020 through December 2020, which entitled him to receive the FAP COVID supplement. There was no COVID-19 Supplement issued in January, February or March 2020. Petitioner should have been given the Emergency COVID supplement for April through December 2020 in accordance with ESA 2020-15 which indicates:

Effective March 27th, MDHHS under the direction of the Federal government, will provide an emergency allotment to address temporary food needs due to COVID-19 pandemic-related economic conditions for up to two months. Michigan was previously approved to issue emergency allotments each month from April through September.

Active FAP groups who are not currently receiving the maximum benefit amount for their group size will receive a supplement to bring their benefit amount up to

the maximum amount allowed for their group size. Groups already receiving the maximum monthly benefit amount **will not** receive an additional supplement based on Food and Nutrition Services.

Evidence on the record indicates that the Department has determined that Petitioner was entitled to receive FAP benefits in the months of January through December 2020. Therefore, Petitioner was entitled to receive the supplemental emergency COVID-19 benefits for April through December 2020, which brings Petitioner's entitlement to the maximum for a person in his circumstances. Petitioner was not entitled to receive FAP supplemental benefits in the months of January, February of March 2020 because he was only entitled to \$16.00 per month in each month based upon income calculations. Thus, Petitioner received an over issuance of Food Assistance Program benefits in the amount of \$178 for each month for a total over-issuance of \$534.00 for January, February, and March 2020, based upon the fact that Petitioner's income was not properly budgeted. The Department is required to recoup overissued benefits.

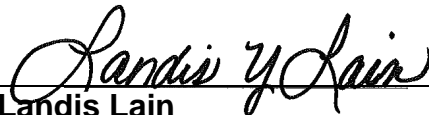
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department has established by the necessary competent, material and substantial evidence on the record that it acted in accordance with Department policy when it determined that Petitioner has been overissued FAP benefits in the amount of \$534.00 based upon Department error for the months of January, February, and March 2020 only, which must be recouped. Even when the error was made by the agency, the Department is compelled by Department policy to recoup any benefits in excess of the amount of \$250. The Department has established its case by a preponderance of the evidence.

DECISION AND ORDER

Accordingly, the Department's decision to recoup benefits for the month of January, February, and March 2020 only, is **AFFIRMED**.

The Department is **ORDERED** to initiate the recoupment process in the amount of \$534.00 for the months of January, February, and March 2020 in accordance with Department policy within ten days of receipt of this Decision and Order.

LL/hb



Landis Lain
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

Saginaw County via electronic mail

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

MDHHS-OIG via electronic mail

DHHS Department Rep.

MDHHS-Recoupment via electronic mail

Petitioner

[REDACTED]
[REDACTED], MI [REDACTED]