



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: March 4, 2021
MOAHR Docket No.: 21-000241
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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, an administrative hearing was held on February 24, 2021.

Petitioner appeared and testified unrepresented.

The Michigan Department of Health and Human Services (Department) was represented by Eugene Brown, Recoupment Specialist.

ISSUE

Did the Department properly calculate and issue notice to recoup benefits?

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 January 14, 2021, the Respondent issued a Notice of Overissuance informing Petitioner that due to agency error, Petitioner was overissued \$1,650.00 in Food Assistance Program (FAP) benefits during the period of July 1, 2019 to June 30, 2020.
2. On December 23, 2020, the Respondent discovered that the Department incorrectly budgeted a one-time only FAP expense as ongoing from July 1, 2019 to June 30, 2020.
3. Respondent was overissued \$978.00 in FAP benefits from July 1, 2019 to June 30, 2020.

4. On January 29, 2021, Petitioner appealed the recoupment action.

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.

The purview of an Administrative Law Judge is to review the Department's action, and, to decide if the evidence of record supports that action taken by the Department. After the Department meets its burden of going forward, Petitioner has burden of proof to show that the action is not supported by the evidence and is contrary to law or policy. ALJs do not have any jurisdiction to deviate from law or policy due to individual circumstances.

Applicable recoupment policy in this case is found in BAM 105, 220, 700, 715, and 725; BEM 500, 501, 550, 554, and 556. Corresponding federal regulations are found at 7 CFR 273.2, 7273.18.

In this case, Petitioner argues that because the error was agency error, he should not have to repay any overissuance.

The Department argues that federal and state law requires the Department to collect any overissuance regardless as to whether they are agency or client error, with certain exceptions not applicable herein. Petitioner does not dispute that he did in fact cash in all the relevant FAP benefits which he used for food purchases during the overissuance time period.

Under the above cited authority, the Department is required under its policy and corresponding federal law to recoup any and all over-issuances, whether due to client or agency error. In fact, the State of Michigan can be subject to significant financial penalties for failing to recoup. As such, the recoupment action is supported by federal law and state policy and thus, must be upheld.

Regarding the calculation, Petitioner disputes the overissuance calculation during the time-period from March 1, 2020 to June 30, 2020 on the grounds that the individuals otherwise eligible for FAP were eligible for a FAP COVID supplement. After reviewing

this matter and Petitioner's objections, the Department stipulated that Petitioner is correct. The Department further stipulated at the administrative hearing that the overissuance amounts for these four months should be removed. As each of the four months reflect an overissuance of \$168.00, deducting that amount from \$1,650.00 leaves Petitioner with a corrected overissuance of \$978.00.

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 correctly determined an overissuance in this matter with a corrected overissuance amount of \$978.00.


DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to determining that Petitioner was overissued FAP benefits and **REVERSED IN PART** with respect to calculation.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the prior overissuance amount of \$1,650.00 from the Bridges system,
2. Reissue a Notice of Overissuance for \$978.00 due to agency error,
3. Enter the new overissuance amount of \$978.00 into the Bridges, and
4. Initiate a recoupment action as required under Department policy and procedure.

JS/ml



Janice Spodarek
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

Jackie Stempel
Muskegon County DHHS – via electronic
mail

DHHS Department Rep.

MDHHS-Recoupment – via electronic mail

BSC3 – via electronic mail

Petitioner

██████████ – via first class mail

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