



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: April 2, 2021
MOAHR Docket No.: 21-000310
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, a telephone hearing was held on March 4, 2021.

Petitioner appeared unrepresented.

The Department of Health and Human Services (Department) was represented by April Nemeck, Hearings Facilitator (HF).

Department Exhibit A.28 was offered and admitted into the record.

Petitioner Exhibit B.6 was offered and admitted into the record.

ISSUE

Did the Department properly propose to recoup FAP 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. At all relevant times, Petitioner was a FAP beneficiary with the Michigan Department of Health and Human Services (MDHHS).
2. On January 8, 2021, the Department issued a Notice of Overissuance of FAP benefits due to client error from April 1, 2020 through December 31, 2020 due to Petitioner failing to report earned income from [REDACTED] timely. Exhibit B.

3. [REDACTED] owns and operates [REDACTED] a franchise. [REDACTED] [REDACTED] is the parent company. Petitioner did timely report all of her income from [REDACTED]
4. On January 19, 2021 Petitioner filed a hearing request disputing the proposed recoupment.

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.

Applicable policy is found primarily at BAM 105, 700, 715, and 725; BEM 500, 501. Corresponding federal regulations are found at 7 CFR 273.18.

In this case, the Department began the administrative hearing by arguing that Petitioner did not have a right to have the recoupment action reviewed as the recoupment was scheduled for a different hearing and that the hearing would be held by workers in the 'recoupment office.' However, a review of the MOAHR data base does not show that there is any other hearing scheduled for Petitioner in the docket system. Moreover, the recoupment action was taken by the MDHHS, not by a separate Department with the State of Michigan. The facts are that Petitioner received a recoupment Notice of Case Action, requested an administrative hearing on the recoupment issue, and had a prehearing conference with a supervisor on the recoupment. Petitioner has a due process right to have her dispute heard, even if the Department is not prepared. The undersigned reviewed this matter with MOAHR management and was instructed to go forward with a substantive review of the recoupment issue.

Here, Petitioner credibly testified, and the HF at the administrative hearing confirmed that the Department at times confuses employers when there are subsidiaries or franchises owned by different parent companies with different names. Here, Petitioner worked for a franchise [REDACTED] and timely reported all her income. That franchise is owned by [REDACTED]. The Department tagged employer '[REDACTED]' in the data match system and decided that Petitioner failed to report this income without further investigating. However, they are one and the same; the Department cannot double budget the income because there is a parent company legally incorporated under a different name. Petitioner did not fail to report her income

and Petitioner did not receive more FAP benefits than she was entitled to. Moreover, Petitioner's supervisor submitted documentation supporting Petitioner's explanation.

After a careful review of the credible and substantial evidence of record, the undersigned finds that the Department has failed to meet its burden of going forward and failed to meet its burden of proof. Under these facts the Department's recoupment action cannot be upheld. 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 did not act in accordance with Department policy when it determined that Petitioner was overissued FAP benefits and when it proposed recoupment.

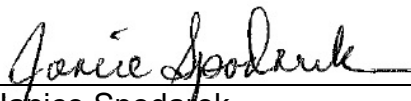
DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

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 and delete the January 8, 2021 recoupment action from the Bridges system and from Petitioner's file for the \$1,680.00 in FAP benefits for the period of April 1, 2020 through December 31, 2020, and
2. Return any FAP benefits to Petitioner which Petitioner may have lost due to the Departments January 8, 2021 recoupment action.

JS/ml



Janice Spodarek
Administrative Law Judge
for Elizabeth Hertel, Director
Department of Health and Human Services

