



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 22, 2021
MOAHR Docket No.: 21-001358
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on April 15, 2021. Petitioner represented herself. The Department was represented by Eugene Brown.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits that 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 August 7, 2014, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of four. Exhibit A, pp 23-28.
2. On September 11, 2014, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of four. Exhibit A, pp 29-34.
3. On September 18, 2014, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of four. Exhibit A, pp 35-39.
4. On February 5, 2015, the Department received Petitioner's Semi-Annual Contact Report (DHS-1046) where she reported that she was living with three other people. Exhibit A, p 54.

5. On March 11, 2015, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of four receiving no earned income from employment and unearned income in the gross monthly amount of \$[REDACTED] Exhibit A, pp 40-45.
6. In May of 2015, Petitioner was employed and received earned income in the gross monthly amount of \$[REDACTED] In June of 2015, Petitioner was employed and received earned income in the gross monthly amount of \$[REDACTED] Exhibit A, pp 46-49.
7. In May of 2015, Petitioner received retroactive Supplemental Security Income (SSI) benefits in the gross monthly amount of \$7,399. In June of 2015, Petitioner received Supplemental Security Income (SSI) in the gross monthly amount of \$[REDACTED] and a \$3,000 retroactive payment. Exhibit A, pp 19-22.
8. Department records indicate that on August 6, 2015, Petitioner reported to the Department that a member of her household was attending college in Oklahoma from August of 2014, through June of 2015. Exhibit A, p 51.
9. Petitioner received Food Assistance Program (FAP) benefits totaling \$674 from May 1, 2015, through June 30, 2015. Exhibit A, p 17.
10. On February 17, 2021, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing her that she had received a \$674 overissuance of Food Assistance Program (FAP) benefits during the period of May 1, 2015, and June 30, 2015, that must be recouped. Exhibit A, pp 8-9.
11. On March 9, 2021, the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits. Exhibit A, pp 4-6.

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) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq*, and Mich Admin Code, R 400.3001 through 400.3011.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (July 1, 2020), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (January 1, 2021), p 7. A pending 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.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons reside in an eligible living situation. A person is temporarily absent from the household if there is a definite plan for that person to return to the household within 30 days. Department of Human Services Bridges Eligibility Manual (BEM) 212 (October 1, 2020), pp 1-3.

Petitioner was an ongoing FAP recipient as a household of four from May 1, 2015, through June 30, 2015. While reviewing Petitioner's eligibility for ongoing benefits during an interview conducted on August 6, 2015, the Department discovered that one member of Petitioner's household, her son, had been attending college in Oklahoma from August of 2014, through June of 2015.

The Department alleges that Petitioner's son had been absent from the household for more than 30 days in May and June of 2015, and that the household was not eligible for any FAP benefits as a household of three based on the income received in those months.

No evidence was presented on the record to establish how often Petitioner's son returned to Michigan while attending college. If Petitioner's son returned home from Oklahoma once a month, then he would meet the definition of temporarily absent, and would have remained an eligible member of the FAP household. If Petitioner's son did not return to Michigan in the 30 days prior to May 1, 2015, then he would no longer be considered a member of Petitioner's FAP household, but Petitioner would have remained eligible for ongoing FAP benefits as a household of three, assuming that all other eligibility criteria were met.

The evidence supports a finding that Petitioner received her first paycheck from new employment on May 13, 2015, and then received a second paycheck on May 27, 2015. If Respondent reported her first paycheck within 10 days as required by BAM 105, and this increase of income would have reduced her eligibility for FAP benefits, then the Department would have redetermined her eligibility for FAP benefits by the first benefit period after June 4, 2015. Therefore, it is not clear how this earned income would have affected her eligibility for FAP benefits as a group of three or four.

The evidence also supports a finding that Petitioner received retroactive SSI in May and June of 2015.

Retroactive SSI benefits may be paid as a one-time payment or in installments over several months. An individual may receive a payment that includes a portion that includes a portion intended as current benefits as well as a portion intended as retroactive benefits. **The portion intended as current benefits is income.** Department of Health and Human Services Bridges Eligibility Manual (BEM) 503 (April 1, 2021), p 36. (Emphasis added.)

Money received in the form of a **nonrecurring lump-sum payment**, including, but not limited to SSI payments, shall be excluded from household income. 7 CFR 273.9(c)(8). (Emphasis added.)

Therefore, the Department failed to establish that all the SSI benefits Petitioner received in May and June of 2015, were countable towards her eligibility for FAP benefits regardless of the size of the household. Only the regular SSI benefits should have been countable and not the retroactive payments she received in those months.

Petitioner received FAP benefits totaling \$674 from May 1, 2015, through June 30, 2015, and the Department alleged that she was not eligible for any of those benefits based on her failure to report that her son was absent from the household. The failure to report a change of household composition, if true, would not have made Petitioner ineligible for any FAP benefits. This Administrative Law Judge finds that the Department failed to establish that Petitioner was not eligible for any FAP benefits in May and June of 2015, and therefore has failed to establish an overissuance that the Department is required to recoup.

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 did not act in accordance with Department policy when it determined that Petitioner received a \$674 overissuance of FAP benefits.


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:

Delete the \$674 overissuance for the period of May 1, 2015, through June 30, 2015, from Petitioner's benefits file and cease any recoupment/collection action.

KS/nr



Kevin Scully
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

