



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: April 23, 2021
MOAHR Docket No.: 21-001490
Agency No.: [REDACTED]
Petitioner: [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 Mary Peterson.

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 [REDACTED] [REDACTED] 2017, the Department received Petitioner's application for Food Assistance Program (FAP) benefits. Exhibit A, pp 10-16.
2. On April 19, 2017, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of one with a net monthly income of \$[REDACTED] after giving her credit for a \$3,702 medical expense. Exhibit A, pp 19-24.
3. On September 9, 2017, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of one with a net monthly income of \$[REDACTED] after giving her credit for a \$3,702 medical expense. Exhibit A, pp 25-28.
4. On January 30, 2018, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of one with a net

- monthly income of \$█ after giving her credit for a \$3,702 medical expense. Exhibit A, pp 37-40.
5. On March 1, 2018, the Department received Petitioner's Mid-Certification Contact Notice (DHS-2240-A) and she did not report any changes from the \$3,702 medical expenses used to determine her eligibility for ongoing Food Assistance Program (FAP) benefits. Exhibit A, pp 41-43.
 6. On March 26, 2018, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of one with a net monthly income of \$█ after giving her credit for a \$3,702 medical expense. Exhibit A, pp 44-47.
 7. On █ █ 2018, the Department received Petitioner's application for State Emergency Relief (SER) assistance where she reported being responsible for prescriptions but did not list an amount. Exhibit A, pp 48-52.
 8. Department records indicate that during an eligibility interview on April 10, 2018, Petitioner did not report having any medical expenses. Exhibit A, pp 53-54.
 9. On a Redetermination (DHS-1010) form received by the Department on April 27, 2018, Petitioner reported having Medicare and being responsible to pay dental and eye glass co-payments. Exhibit A, pp 57-64.
 10. On January 22, 2019, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting that she provide verification of ongoing out of pocket medical expenses. Exhibit A, pp 76-77.
 11. On February 14, 2019, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of one receiving a net monthly income of \$661 with no verified medical expenses over \$35. Exhibit A, pp 78-81.
 12. Petitioner received Food Assistance Program (FAP) benefits totaling \$2,304 from March 1, 2018 through February 28, 2018. Exhibit A, pp 94-96.
 13. Department records indicate that on April 18, 2014, Petitioner was credited with being responsible for a \$3,719.81 medical expense. Exhibit A, p 124.
 14. Department records indicate that on April 26, 2013, Petitioner was credited with being responsible for a \$18.02 medical expense.
 15. On March 1, 2021, the Department notified Petitioner that she had received a \$2,124 overissuance of Food Assistance Program (FAP) benefits during the period of March 1, 2018, through February 28, 2019, due to Department error for not removing a one-time expense from her Food Assistance Program (FAP) budget. Exhibit A, pp 127-132.

16. 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 6-8.

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.

An agency error is caused by incorrect actions (including delayed or no action) by the Michigan Department of Health and Human Services (MDHHS) staff or department processes. Department of Health and Human Services Bridges Administrative Manual (BAM) 705 (October 1, 2018), p 1.

A recipient claim is an amount owed because of benefits that are overpaid. This claim is a Federal debt and state agencies must establish and collect recipient claims. 7 CFR 273.18.

When determining countable expenses towards eligibility for FAP benefits, the Department will only consider the medical expenses of senior/disabled/veterans in the eligible household. Recipients of FAP benefits are not required to but may voluntarily report medical expenses during the benefit period. Department of Health and Human Services Bridges Eligibility Manual (BEM) 554 (January 1, 2020), pp 8-9.

On [REDACTED] [REDACTED] 2017, the Department received Petitioner's application for FAP benefits. On March 19, 2017, the Department notified her that she was eligible for FAP benefits as a household of one with a net monthly income of [REDACTED]0 after giving her credit for a \$3,702 medical expense.

Department records indicate that on April 18, 2014, Petitioner was credited with being responsible for a \$3,718.81 medical expense and on April 26, 2013, she was credited with being responsible for a \$18.02 medical expense.

It is not disputed that Petitioner is disabled as defined by the Social Security Administration and that she received social security benefits. As a disabled FAP recipient, Petitioner was entitled to a deduction for out-of-pocket medical expenses less a \$35 medical deduction as directed by BEM 556.

Petitioner received FAP benefits from March 19, 2017, receiving credit for \$3,702 of medical expenses in each month until February 14, 2019, when that expense was removed from her FAP budget. No evidence was presented on the record that Petitioner actually incurred medical expenses totaling \$3,737 in each of the months that she received FAP benefits. Petitioner received FAP benefits totaling \$2,304 from March 1, 2018, through February 28, 2018. If not for the expenses that the Department mistakenly included in its determination of Petitioner's eligibility for FAP benefits, she would have been eligible for only \$180 of those benefits.

It is likely that Petitioner received other benefits since March 19, 2017, that she was not eligible for. When the source of the overissuance is a Department error, the overissuance period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the RS, whichever 12-month period is later. Department of Health and Human Services Bridges Administrative Manual (BAM) 705 (October 1, 2018), p 5. Therefore, the Department is seeking recoupment of an overissuance for the 12-month period of March 1, 2018, through February 28, 2019.

Petitioner argued that she should not be liable for an error caused by the Department.

However, Petitioner is not entitled to any FAP benefits that she was not eligible for, and federal regulations require the Department to collect overpaid benefits.


Petitioner argued that she did report that she did not incur the medical expenses but that her case worker was uncooperative and refused to make changes to her case. Petitioner offered no evidence that she reported this matter to her caseworker, but even if true, this fact does not change her responsibility to repay the overissuance of FAP benefits. The hearing record supports a finding that Petitioner received an overissuance of FAP benefits, and the Department concedes that the overissuance was caused by Department error.

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 \$2,124 overissuance of Food Assistance Program (FAP) benefits during the period of March 1, 2018, through February 28, 2019, due to Department error.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

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

DHHS

Kimberly Reed
609 North State Street
PO Box 278
Stanton, MI
48888

Montcalm County DHHS- via electronic
mail

OIG Hearings- via electronic mail

L. Bengel- via electronic mail

DHHS Department Rep.

MDHHS-Recoupment- via electronic mail
235 S Grand Ave
Suite 1011
Lansing, MI
48909

Petitioner

[REDACTED] - via first class mail
[REDACTED]
[REDACTED], MI
[REDACTED]