



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: June 9, 2021
MOAHR Docket No.: 21-002270
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 June 3, 2021. Petitioner was represented by [REDACTED] and [REDACTED]. Petitioner testified on her own behalf. 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 [REDACTED], 2017, the Department received Petitioner's application for assistance as a household of four people including herself, her two children, and their father. Exhibit A, pp 83-116.
2. Respondent reported on her [REDACTED], 2017, application for assistance that she was employed and expected to work 40 hours per week at a rate of \$16.00 per hour. Exhibit A, p 104.
3. On August 30, 2017, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of four receiving earned income in the gross monthly amount of \$[REDACTED] and unearned income in the gross monthly amount of \$[REDACTED]. Exhibit A, pp 48-53.

4. Petitioner was an ongoing Food Assistance Program (FAP) recipient on January 16, 2018, when the Department received her Semi-Annual Contact Report (DHS-1046) where she reported that the father of her child had started employment and that her household income had increased by over \$100 more than the \$ [REDACTED] that was being applied towards her eligibility for Food Assistance Program (FAP) benefits. Exhibit A, pp 81-82.
5. On February 6, 2018, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of four receiving earned income in the gross monthly amount of \$ [REDACTED]. Exhibit A, pp 44-47.
6. Petitioner was an ongoing Food Assistance Program (FAP) recipient on July 20, 2018, when the Department received her Redetermination (DHS-1010) form where she reported that she was the only person in her household of four people that was employed and that she was receiving earned income in the gross bi-weekly amount of \$ [REDACTED]. Exhibit A, pp 65-70.
7. On September 17, 2018, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of four receiving earned income in the gross monthly amount of \$ [REDACTED]. Exhibit A, pp 38-43.
8. Petitioner was employed by Highfields Inc from the first quarter of 2017, through the third quarter of 2019. Exhibit A, pp 63-64.
9. Petitioner was employed by Highfields Inc. and she received earned income from August 4, 2017, through September 14, 2018. Exhibit A, pp 54-62.
10. The father of Petitioner's children received earned income from employment from January 5, 2018, through March 30, 2018. Exhibit A, pp 66-67.
11. Petitioner received Food Assistance Program (FAP) benefits totaling \$5,918 from November 1, 2017, through August 31, 2018. Exhibit A, pp 15-16.
12. On September 19, 2018, the Department referred Petitioner's case for further review into whether she had received an "overissuance" of Food Assistance Program (FAP) benefits due to income that was not accounted for. Exhibit A, p 117.
13. On March 5, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing her that a \$5,283 overissuance of Food Assistance Program (FAP) benefits receiving during the period of November 1, 2017, through August 31, 2018, would be recouped. Exhibit A, pp 8-13.
14. On April 29, 2021, the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits. Exhibit A, p 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.

All earned and unearned income available is countable unless excluded by policy. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. Department of Human Services Bridges Eligibility Manual (BEM) 500 (July 1, 2020).

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. Department of Human Services Bridges Eligibility Manual (BEM) 505 (January 1, 2021), pp 7-8.

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.

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. Parents and their children must be placed in the same FAP benefit group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (October 1, 2020), p 1.

On August 18, 2017, the Department received Petitioner's application for assistance as a household of four people including herself, her two children and their father. The Department determined Petitioner's eligibility for FAP benefits as a household of four as

directed by BEM 212. Petitioner reported on her application that she was employed and expected to work 40 hours per week at a rate of \$16.00 per hour.

On August 30, 2017, the Department notified Petitioner that she was eligible for FAP benefits as a household of four receiving earned income in the gross monthly amount of \$945 and unearned income in the gross monthly amount of \$11.

Sometime later, the Department would discover that Petitioner was receiving earned income from employment much higher than \$945 per month. Department records supports a finding that Petitioner was employed by [REDACTED] from the first quarter of 2017, through the third quarter of 2019. Wage data reported to the Michigan Unemployment Insurance Agency and accessed by the Department's database connections to that data indicate that from the first quarter of 2017, through the third quarter of 2017, Petitioner received earned income from her employment at [REDACTED] averaging \$ [REDACTED] per month. Petitioner's actual earnings in the monthly leading up to her [REDACTED], 2017, application for assistance were consistent with working full time at a rate of \$ [REDACTED] per hour.

On August 18, 2017, the Department notified Petitioner that she was eligible for FAP benefits as a household of four people receiving earned income in the gross monthly amount of \$ [REDACTED]. The hearing record supports a finding that Petitioner was receiving FAP benefits as of September 1, 2017, that based on less income than she was actually receiving.

On August 30, 2017, the Department received Petitioner's Semi-Annual Contact Report where she reported that her earned income was more than \$100 higher than the \$945 that was being applied towards her eligibility for FAP benefits. Petitioner also reported to the Department that the father of her children, a mandatory benefit group member, had started new employment.

On February 6, 2018, the Department notified Petitioner that she was eligible for ongoing FAP benefits as a household of four people receiving earned income in the gross monthly amount of \$ [REDACTED].

Petitioner received paychecks of \$ [REDACTED] on January 5, 2018, and January 19, 2018. The father of Petitioner's children received paychecks of \$ [REDACTED] on January 5, 2018, and \$ [REDACTED] on January 19, 2018. Therefore, Petitioner's actual gross monthly earned income for the household in January of 2018 was \$ [REDACTED]. As of October 1, 2017, the gross monthly income limit that a household of four could receive and remain eligible for FAP benefits was \$3,118. Department of Health and Human Services Reference Table Manual (RFT) 255 (October 1, 2017), p 1. Therefore, the hearing record supports a finding that Petitioner was receiving FAP benefit that she was not eligible for as of January 1, 2018.

The hearing record supports a finding that Petitioner was receiving FAP benefits based on incorrect income determinations as of August 30, 2017. If Petitioner had notified the Department of the discrepancy between her actual income and the Department's

determination of her earned income in the gross monthly amount of \$945, then the Department would have redetermined her eligibility for ongoing FAP benefits no later than the first benefit period after October 1, 2017.

If the Department had properly applied the income Petitioner reported on her August 18, 2017, application for assistance, then she would have received less FAP benefits than she actually received.

An agency error is caused by incorrect action by Department staff and includes situations where available information was not used or where data exchange reports were not acted upon timely. BAM 700, p 5. In this case, Petitioner was receiving FAP benefits as of August 30, 2017, that she was not eligible for due to the Department's faulty determination of her prospective earned income from employment despite Petitioner's honest reporting of that income on her application form. Further, the Department's representative concedes that it was Department error that caused Petitioner to receive FAP benefits that she was not eligible for.

Petitioner received FAP benefits totaling \$ [REDACTED] from November 1, 2017, through December 31, 2017. If Petitioner's actual earned income from employment had been applied towards her eligibility for FAP benefits, then she would have been eligible for only \$ [REDACTED] of those FAP benefits.

Petitioner received FAP benefits totaling \$ [REDACTED] from January 1, 2018, through March 31, 2018. If Petitioner's actual earned income from employment and the income earned by the father of her children that she reported on January 16, 2018, had been applied towards her eligibility for FAP benefits, then she would have not been eligible for any of the FAP benefits that she received because the total household's gross monthly income exceeded the limit for a household of four to receive FAP benefits.

Petitioner received FAP benefits totaling \$ [REDACTED] from April 1, 2018, through August 31, 2018. During this period, Petitioner was the only person in the household receiving any earned income, but in April and August of 2018, Petitioner's income was high enough to exceed the gross income limit for a household of four. In the remaining three months, Petitioner's gross monthly income was \$ [REDACTED] less than the monthly gross income limit, but the household remained ineligible for any FAP benefits based on net monthly income.

The hearing record supports a finding that Petitioner received FAP benefits that she was not eligible due to the Department's miscalculation of her household income. When FAP benefits are overpaid, this creates a Federal debt, and the Department is required to establish and collect this debt. 7 CFR 273.18.

On March 5, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing her that she had received a \$5,283 overissuance of FAP benefits that would be recouped due to the Department's error. This Administrative Law Judge finds that this determination contains further error by the Department. It is not clear why the second page of the Notice of Overissuance does not include an accounting for FAP

benefits issued in December of 2018. The Department presented an overissuance budget on page 20 of its proposed exhibits showing that Petitioner received a \$626 overissuance of FAP benefits but failed to account for that overissuance of the Notice of Overissuance.

Petitioner argued that she should not be held accountable for the Department's miscalculation of her prospective income that was likely to continue, and that she had not access to the Department's system to alert her that her household income had been underestimated.

However, on August 30, 2017, the Department sent her written notice that her eligibility for FAP benefits had been determined based on earned income in the gross monthly amount of \$█. On January 2, 2018, the Department notified in writing that her eligibility for ongoing FAP benefits was being determined based on earned income in the gross monthly amount of \$█. The evidence supports a finding that the amount of income Petitioner was receiving was available to the Department, but the evidence also supports a finding that Petitioner received FAP benefits that she was not entitled to. That "overissuance" of Federally funded FAP benefits must be recouped as directed by State policy and Federal regulations.

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 the amount of the "overissuance" of Food Assistance Program (FAP) benefits, but acted in accordance with Department policy when it determined that Petitioner's received an "overissuance" of benefits that must be recouped.

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:

Respondent did receive an overissuance of Food Assistance Program (FAP) benefits in the amount of \$5,918. The Department is ORDERED to initiate recoupment procedures for the amount of \$5,918 in accordance with Department policy.

KS/nr



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

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

Tamara Little
301 E. Louis Glick Hwy.
Jackson, MI 49201

Jackson County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

[REDACTED]
[REDACTED], MI [REDACTED]