



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR



Date Mailed: July 14, 2021
MOAHR Docket No.: 21-002538
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On May 14, 2021, Petitioner, [REDACTED], requested a hearing to dispute a notice of overissuance. Following Petitioner's hearing request, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 7 CFR 273.15, and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on July 7, 2021. Petitioner appeared and represented herself. Respondent, Department of Health and Human Services (Department), had Jennifer Braxmaier, Recoupment Specialist, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 32-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Whether the Department properly determined that Petitioner owes the Department a debt of \$462.00 for Food Assistance Program (FAP) benefits that were overissued to her from July 2016 through September 2016?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner applied for and received FAP benefits from the Department.
2. In May 2016, Petitioner's group included [REDACTED].
3. On May 20, 2016, Petitioner reported that [REDACTED] moved out of her household.
4. The Department failed to process Petitioner's change report and continued to issue FAP benefits to her as if [REDACTED] was still in her household.

5. The Department issued Petitioner FAP benefits of \$508.00 per month from July 2016 through September 2016, based on a group size that included [REDACTED].
6. In August 2016, the Department discovered that it erroneously failed to remove [REDACTED] from Petitioner's group.
7. The Department removed [REDACTED] from Petitioner's group, and the Department determined that Petitioner was only eligible for FAP benefits of \$354.00 per month from July 2016 through September 2016.
8. The Department subtracted the total amount of FAP benefits that Petitioner was eligible for from the total amount of FAP benefits she received from July 2016 through September 2016, and the Department determined that Petitioner was overissued \$426.00.
9. On May 3, 2021, the Department mailed a notice of overissuance to Petitioner to notify her that she received an overissuance of \$426.00 in FAP benefits from July 2016 through September 2016.
10. On May 14, 2021, Petitioner requested a hearing to dispute the notice of overissuance.

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 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 administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

When a client receives more benefits than she was entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 1, 2018), p. 1. The overissuance amount is the amount of benefits in excess of the amount the client was eligible to receive. *Id.* at 2. In this case, the Department issued Petitioner more FAP benefits than what she was eligible to receive because the Department issued Petitioner FAP benefits based on the incorrect group size. The Department issued Petitioner FAP benefits based on the incorrect group size because the Department included [REDACTED] in Petitioner's group after he moved out of her household. The Department presented sufficient evidence to establish that the total amount of FAP benefits overissued was \$426.00, and Petitioner did not present any evidence to rebut the

Department's evidence. Therefore, I must find that the Department properly determined that Petitioner owes the Department a debt of \$426.00.

Petitioner asserted that she should not be responsible for paying the overissuance because it was not her fault that she was overissued FAP benefits. A FAP overissuance that results from the Department's error must be pursued by the Department when the amount is greater than or equal to \$250.00. BAM 705 (October 1, 2018), p. 1. Here, Petitioner received an overissuance due to the Department's error. However, the Department acted in accordance with its policies when it pursued the overissuance because the amount involved was greater than or equal to \$250.00.


Petitioner further asserted that she should not be responsible for paying the overissuance because the Department did not notify her of the overissuance in a timely manner. Petitioner is correct that the Department did not act in a timely manner. The Department was required to establish a claim for the overissuance before the last day of the quarter following the quarter in which the overissuance was discovered. 7 CFR 273.18(d)(1). The Department did not act timely because it discovered the overissuance in 2016 and did not establish a claim until 2021. However, a claim that is not established timely is still a valid claim. 7 CFR 273.18(d)(3). Thus, although the Department did not act in a timely manner, Petitioner is still responsible for paying the overissuance.

DECISION AND ORDER

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 its policies and the applicable law when it determined that Petitioner owes the Department a debt of \$426.00 for FAP benefits that were overissued to her from July 2016 through September 2016.

IT IS ORDERED that the Department's decision is AFFIRMED.

JK/cc



Jeffrey Kemm
Administrative Law Judge

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

Via Email:

MDHHS-Branch-Hearings
MDHHS-Recoupment-Hearings
D. Sweeney
M. Holden
MOAHR

Petitioner- Via USPS:

