



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 16, 2022
MOAHR Docket No.: 21-006095
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On December 16, 2021, Petitioner, ██████████, 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 March 10, 2022. Petitioner appeared with his authorized hearing representative, ██████████. Respondent, Department of Health and Human Services (Department), had Mary Peterson, Recoupment Specialist, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 118-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 \$1,246.00 for Food Assistance Program (FAP) benefits that were overissued to him from January 2017 through July 2017?

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 December 28, 2015, Petitioner notified the Department that his income increased to \$██████████ per month.
2. On March 23, 2016, Petitioner notified the Department that it was not budgeting his correct income; the Department was undercounting his income. The Department reviewed Petitioner's case, corrected his income, and then issued a

notice of case action to notify Petitioner that his FAP benefit was going to decrease due to his increased income.

3. On June 8, 2016, the Department redetermined Petitioner's eligibility for FAP benefits and erroneously failed to properly budget Petitioner's income. The Department issued a notice of case action to notify Petitioner that his FAP benefit was going to increase due to his decreased income.
4. On June 15, 2016, Petitioner notified that Department again that it was not budgeting his correct income; the Department was undercounting his income again. The Department reviewed Petitioner's case, corrected his income, and then issued a notice of case action to notify Petitioner that his FAP benefit was going to decrease due to his increased income.
5. On June 18, 2016, the Department redetermined Petitioner's eligibility for FAP benefits and erroneously failed to properly budget Petitioner's income again. The Department issued a notice of case action to notify Petitioner that his FAP benefit was going to increase due to his decreased income.
6. On July 15, 2016, Petitioner notified that Department again that it was not budgeting his correct income; the Department was undercounting his income again. The Department reviewed Petitioner's case, corrected his income, and then issued a notice of case action to notify Petitioner that his FAP benefit was going to decrease due to his increased income.
7. On July 28, 2016, Petitioner renewed his eligibility for FAP benefits and reported his income was \$ [REDACTED] per month.
8. On December 7, 2016, the Department redetermined Petitioner's eligibility for FAP benefits and erroneously failed to properly budget Petitioner's income again. The Department issued a notice of case action to notify Petitioner that his FAP benefit was going to increase due to his decreased income. The Department notified Petitioner that he was eligible for a FAP benefit of \$194.00 per month, effective January 1, 2017.
9. In January 2017, Petitioner received \$ [REDACTED] in income from social security, Petitioner paid \$414.00 for rent, Petitioner was responsible for paying for his heating/cooling utilities, and Petitioner had a household size of one. The Department issued Petitioner a FAP benefit of \$194.00.
10. In February 2017, Petitioner received \$ [REDACTED] in income from social security, Petitioner paid \$414.00 for rent, Petitioner was responsible for paying for his heating/cooling utilities, and Petitioner had a household size of one. The Department issued Petitioner a FAP benefit of \$194.00.
11. In March 2017, Petitioner received \$ [REDACTED] in income from social security, Petitioner paid \$414.00 for rent, Petitioner was responsible for paying for his

heating/cooling utilities, and Petitioner had a household size of one. The Department issued Petitioner a FAP benefit of \$194.00.

12. In April 2017, Petitioner received \$[REDACTED] in income from social security, Petitioner paid \$414.00 for rent, Petitioner was responsible for paying for his heating/cooling utilities, and Petitioner had a household size of one. The Department issued Petitioner a FAP benefit of \$194.00.

13. In May 2017, Petitioner received \$[REDACTED] in income from social security, Petitioner paid \$414.00 for rent, Petitioner was responsible for paying for his heating/cooling utilities, and Petitioner had a household size of one. The Department issued Petitioner a FAP benefit of \$194.00.

14. In June 2017, Petitioner received \$[REDACTED] in income from social security, Petitioner paid \$414.00 for rent, Petitioner was responsible for paying for his heating/cooling utilities, and Petitioner had a household size of one. The Department issued Petitioner a FAP benefit of \$194.00.

15. In July 2017, Petitioner received \$[REDACTED] in income from social security, Petitioner paid \$414.00 for rent, Petitioner was responsible for paying for his heating/cooling utilities, and Petitioner had a household size of one. The Department issued Petitioner a FAP benefit of \$194.00.

16. The Department reviewed Petitioner's case and discovered that it erroneously failed to properly budget Petitioner's household income.

17. The Department re-budgeted Petitioner's household income, and the Department determined that Petitioner was only eligible for a FAP benefit of \$16.00 per month from January 2017 through July 2017.

18. On December 3, 2021, the Department mailed a notice of overissuance to Petitioner to notify him that he received an overissuance of \$1,246.00 in FAP benefits from January 2017 through July 2017.

19. On December 16, 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.

In this case, the Department determined that it overissued FAP benefits to Petitioner because it did not budget all of Petitioner's household income. When a client receives more benefits than he 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. Based on the evidence presented, the Department overissued FAP benefits to Petitioner.

From January 2017, through July 2017, the Department failed to properly budget Petitioner's household income. As a result, Petitioner received a FAP benefit of \$194.00 per month when Petitioner was only eligible for a FAP benefit of \$16.00 per month. Petitioner was only eligible for a FAP benefit of \$16.00 per month based on his group size and net household income. Since Petitioner received a greater FAP benefit than he was eligible for from January 2017 through July 2017, Petitioner received FAP benefits that he was not entitled to receive. Thus, Petitioner was overissued FAP benefits. The Department properly determined that the total amount of the overissuance was \$1,246.00.

Petitioner asserted that he should not be responsible for paying the overissuance because it was not his fault that he 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. Although Petitioner received an overissuance due to the Department's error, 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 he should not be responsible for paying the overissuance because the Department did not notify him 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 2017 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 \$1,246.00 for FAP benefits that were overissued to him from January 2017 through July 2017.

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

JK/mp



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

Email Recipients:

MDHHS-RECOUPMENT-HEARINGS
MDHHS-Montcalm-Hearings
D. Sweeney
M. Holden
MOAHR
BSC3

First-Class Mail Recipients:

[REDACTED]
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[REDACTED] MI [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]