



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 22, 2022
MOAHR Docket No.: 22-000278
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002 After due notice, a telephone hearing was held on March 17, 2022. The Petitioner appeared and represented himself. The Department of Health and Human Services (MDHHS) was represented by Eugene Brown, Recoupment Specialist.

ISSUE

Did MDHHS properly determine that Petitioner had been overissued Food Assistance Program (FAP) benefits due to client error?

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 was an ongoing recipient of FAP.
2. From December 1, 2020 to June 30, 2021, Petitioner was issued \$5,096.00 in FAP benefits for a four-person group, consisting of his three minor daughters and himself (Exhibit A, pp. 16-18).
3. On January 26, 2022, MDHHS issued a Notice of Overissuance to Petitioner informing him that he was overissued FAP benefits from December 1, 2020 to June 30, 2021 in the amount of \$3,872.00. The overissuance (OI) was determined to be due to client error for Petitioner's failure to report his children no longer being in his household (Exhibit A, pp. 7-12).
4. On February 1, 2022, Petitioner verbally requested a hearing to dispute that he was overissued FAP benefits due to a client error (Exhibit A, p. 4).

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) [formerly known as the Food Stamp program] 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 (formerly known as the Department of Human Services) 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, Petitioner verbally requested a hearing to dispute that he was overissued FAP benefits due to a client error¹. Petitioner states that his three daughters remained living in his household full-time during the alleged OI period and therefore his group size was always accurate.

When a client group receives more benefits than it is entitled to receive MDHHS must attempt to recoup the overissuance. BAM 700 (October 2018), p. 1. An overissuance might be discovered through normal casework or by case readings, computer cross matches, quality control audit findings, Welfare Fraud Hotline referrals, non-honored repay agreements, or the Michigan Administrative Hearings System. BAM 700, p. 4. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p. 7. When a potential overissuance is discovered, the following actions must be taken:

1. Immediately correct the current benefits.
2. **Obtain initial evidence that an overissuance potentially exists.**
3. Determine if it was caused by department, provider or client actions.
4. Refer any overissuances needing referral to the RS within 60 days of suspecting one exists

BAM 700, p. 10 (Emphasis added).

MDHHS must attach potential evidence to the Overissuance Referral. BAM 700, p. 11. MDHHS also is required to investigate all OI referrals. BAM 700, p. 14. Within 60 days of receiving the referral, the Recoupment Specialist must determine if an OI actually occurred and determine the type of OI. Within 90 days of determining an overissuance occurred, the Recoupment Specialist must:

- Obtain all evidence needed to establish it.
- Calculate the amount.
- Establish the discovery date.
- Send a Notice of Overissuance to the client.
- Enter the overissuance on the Benefit Recovery System.

¹ Clients may verbally request hearings to dispute ongoing FAP eligibility. BAM 600 (January 2020) p. 2.

- Refer to the Office of Inspector General for investigation if an intentional program violation is suspected.
- Send an Overissuance Referral Disposition to the specialist explaining the final disposition.

BAM 715 (October 2017), pp. 3-4.

In support of its contention that Petitioner's three daughters no longer lived in Petitioner's household, MDHHS relied upon a phone call that Recoupment Specialist Carmen Flickinger received allegedly from Petitioner stating that his three daughters had been out of his home since November 5, 2020. Recoupment Specialist Flickinger did not appear at the hearing to provide testimony of this reported phone call. MDHHS did not present any corroborating evidence that Petitioner's daughters had moved out of his household and relied solely upon this phone call to determine a client error OI occurred.

Petitioner vehemently denies ever making such a call to MDHHS and states that for the past four years his three daughters have lived in his household full-time without disruption. MDHHS was required by policy to investigate the phone call and seek corroborating evidence as to whether Petitioner's group size had in fact changed and whether that caused him to be overissued benefits. Here, MDHHS relied solely upon one phone call with no proof that the caller's identity had been verified to be Petitioner. MDHHS did not seek records of where the minor children would have moved to, did not seek school records, and did not do additional investigation into the phone call. Since MDHHS did not investigate the OI referral as required, MDHHS has not acted in accordance with policy in establishing that an overissuance of benefits occurred.

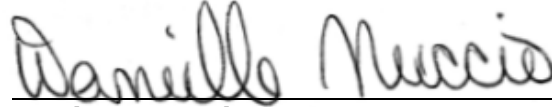
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that MDHHS did not act in accordance with Department policy when it determined that Petitioner had been overissued FAP benefits due to client error.

DECISION AND ORDER

Accordingly, MDHHS' 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:

1. Delete the \$3,872.00 FAP overissuance in its entirety and cease any recoupment action.



Danielle Nuccio
Administrative Law Judge

DN/mp

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-Ottawa-Hearings
D. Sweeney
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First-Class Mail Recipient:

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