



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 7, 2022
MOAHR Docket No.: 22-000861
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 29, 2022. [REDACTED], the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Dawn McKay, Recoupment Specialist.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-66.

ISSUE

Did the Department properly determine that Petitioner received Food Assistance Program (FAP) benefits that she was not eligible for and 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. From October 2021 to January 2022, Petitioner received FAP benefits in the amount of \$554.00 per month. (Exhibit A, p. 22)
2. On June 1, 2021, Petitioner submitted a redetermination for FAP benefits and a telephone interview was completed June 10, 2021. At that time Petitioner reported she was unrelated to household member Scott Smith, who purchases and prepares food separately. (Exhibit A, pp. 5-11)

3. On January 4, 2022, the Department contacted Petitioner regarding possible marriage. Petitioner confirmed that she and Scott Smith were married on August 12, 2021. Petitioner's husband's employment was confirmed. It was also noted that Petitioner's daughter left the home in November 2021. (Exhibit A, pp. 2 and 12)
4. The Department determined that Petitioner was overissued FAP benefits from October 1, 2021 to January 31, 2022 due to not reporting her marriage and not timely reporting when her daughter moved out of the home. (Exhibit A, pp. 2 and 23-24)
5. On February 4, 2022, the Department sent Petitioner a Notice of Overissuance instructing her that a \$2,216.00 overissuance of FAP benefits occurred from October 1, 2021 to January 31, 2022 due to client error and would be recouped. (Exhibit A, pp. 23-24)
6. On January 25, 2022, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 3-4)

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.

Pursuant to BAM 105, clients have a responsibility to cooperate with the Department in determining initial and ongoing eligibility. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, August 1, 2021, p. 9. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes any changes with marital status and household composition. (BAM 105, pp. 11-12)

For FAP, spouses who are legally married and live together must be in the same group. BEM 212, October 1, 202, p. 1)

For FAP, the Department will act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220, August 1, 2021,

p. 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p. 13.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, October 1, 2018, p. 1. An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or department processes, such as when available information was not used. Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 5. A client error 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.

In this case, the Department determined that a client error overissuance occurred because Petitioner failed to report her marriage and not timely reporting when her daughter moved out of the home. (Exhibit A, pp. 2 and 23-24)

On June 1, 2021, Petitioner submitted a redetermination for FAP benefits and a telephone interview was completed June 10, 2021. At that time Petitioner reported she was unrelated to household member Scott Smith, who purchases and prepares food separately. (Exhibit A, pp. 5-11)

On January 4, 2022, the Department contacted Petitioner regarding possible marriage. Petitioner confirmed that she and Scott Smith were married on August 12, 2021. Petitioner's husband's employment was confirmed. It was also noted that Petitioner's daughter left the home in November 2021. (Exhibit A, pp. 2 and 12)

The Department determined that Petitioner was overissued FAP benefits from October 1, 2021 to January 31, 2022 due to not reporting her marriage and not timely reporting when her daughter moved out of the home. (Exhibit A, pp. 2 and 23-24)

On February 4, 2022, the Department sent Petitioner a Notice of Overissuance instructing her that a \$2,216.00 overissuance of FAP benefits occurred from October 1, 2021 to January 31, 2022 due to client error and would be recouped. (Exhibit A, pp. 23-24)

Petitioner asserted that she is not really in a relationship with her husband. Rather, it was a marriage of convenience. Petitioner was very ill with COVID-19 and got married to Scott Smith so that he could add her to his medical and life insurance. Petitioner also discussed the amount of her bills and monthly expenses. (Exhibit A, pp. 2 and 12; Petitioner Testimony)

Pursuant to the above cited BEM 212 policy, spouses who are legally married and live together must be in the same group. It was uncontested that Petitioner was legally married and lives in the same home as her spouse. Accordingly, Petitioner's spouse was required to be included in Petitioner's FAP group. Additionally, only certain types of

expenses can be considered in the FAP budget. Further, the Department is required by policy to use standardized amounts for allowable heat and utility expenses. See BEM 554, July 1, 2021, pp. 1-34)


Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits from October 1, 2021 to January 31, 2022 due to a client error. Petitioner failed to report her marriage and did not timely report when her daughter moved out of the home. The Department properly re-determined Petitioner's eligibility for FAP during the relevant time period. The Department properly sought recoupment of \$2,216.00 from Petitioner.

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 \$2,216.00 overissuance of FAP benefits that must be recouped.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

CL/dm



Colleen Lack
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

Sent via Email:

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

Sent via First-Class Mail:

[REDACTED]
[REDACTED], MI [REDACTED]