



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: April 19, 2022
MOAHR Docket No.: 22-001025
Agency No.: ██████████
Petitioner: ██████████

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 April 13, 2022, from Lansing, Michigan. ██████████, the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Eugene Brown II, Recoupment Specialist.

During the hearing proceeding, the Department's hearing Summary packet was admitted as Exhibit A, pp. 1-74.

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. On October 8, 2020, a Notice of Case Action was issued to Petitioner stating FAP was approved for the period of October 7, 2020 to October 31, 2020. A budget summary was included showing no earned income was included in the FAP budget. Petitioner was reminded of the responsibility to report changes, including changes in employment, within 10 days. A blank Change Report form was included. (Exhibit A, pp. 24-31)
2. On October 15, 2020, a Notice of Case Action was issued to Petitioner stating FAP was approved for the period of November 1, 2020 to September 30, 2021. A

budget summary was included showing no earned income was included in the FAP budget. Petitioner was reminded of the responsibility to report changes, including changes in employment, within 10 days. (Exhibit A, pp. 32-36)

3. On December 2, 2020, a New Hire Client Notice was issued to Petitioner requesting information regarding Petitioner's employment with [REDACTED] by December 14, 2020. (Exhibit A, pp. 37-38)
4. Petitioner worked part time at [REDACTED] for about a month and the employment ended in December 2020. (Petitioner Testimony)
5. On January 6, 2021, a Notice of Case Action was issued to Petitioner stating the FAP case would close effective February 1, 2021 based on Petitioner's failure to verify requested information. (Exhibit A, pp. 39-42)
6. On January 11, 2021, Petitioner started a new position at [REDACTED] and called her caseworker to report the employment. The case worker indicated she was able to verify this employment in a database, as well as the end of the prior employment. Petitioner was advised she did not need to provide any further verification to the Department. (Exhibit A, p. 3; Petitioner Testimony)
7. On February 1, 2021, the case worker ran a check with The Work Number, which verified Petitioner's current employment as well as the end of the prior employment with [REDACTED] (Recoupment Specialist Testimony)
8. On February 3, 2021, a Notice of Case Action was issued to Petitioner stating FAP was approved for a decreased amount for the period of February 1, 2021 to September 30, 2021. A budget summary was included showing earned income was included in the FAP budget. (Exhibit A, pp. 43-47)
9. The Department determined that Petitioner was overissued FAP benefits from January 1, 2021 to September 30, 2021 due to an agency error. Specifically, the Department incorrectly issued FAP benefits after Petitioner failed to return the New Hire Report by the December 14, 2020 due date. (Exhibit A, pp. 1, 9-12, and 17; Recoupment Specialist Testimony)
10. On February 25, 2022, the Department sent Petitioner a Notice of Overissuance instructing her that a \$3,678.00 overissuance of FAP benefits occurred from January 1, 2021 through September 30, 2021 and would be recouped. (Exhibit A, pp. 10-15)
11. On March 8, 2022, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 5-6)

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) [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, July 1, 2020, p. 9. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes any changes with income. BAM 105, pp. 11-14.

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, July 1, 2020, 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. 12.

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 Petitioner was overissued FAP benefits from January 1, 2021 to September 30, 2021 due to an agency error. Specifically, the Department incorrectly issued FAP benefits after Petitioner failed to return the New Hire Report by the December 14, 2020 due date. (Exhibit A, pp. 1, 9-12, and 17; Recoupment Specialist Testimony)

It was not contested that Petitioner did not return the New Hire report. However, the January 6, 2021, Notice of Case Action stated the FAP case would not close until February 1, 2021 based on Petitioner's failure to verify requested information. (Exhibit

A, pp. 39-42) When Petitioner started a new position at [REDACTED] on January 11, 2021, Petitioner called her caseworker to report the employment. The case worker indicated she was able to verify this employment in a database, as well as the end of the prior employment. Petitioner was advised she did not need to provide any further verification to the Department. (Exhibit A, p. 3; Petitioner Testimony)

On February 1, 2021, the case worker ran a check with The Work Number, which verified Petitioner's current employment as well as the end of the prior employment with [REDACTED] (Recoupment Specialist Testimony) On February 3, 2021, a Notice of Case Action was issued to Petitioner stating FAP was approved for a decreased amount for the period of February 1, 2021 to September 30, 2021. A budget summary in the Notice of Case Action showed that gross monthly earned income of [REDACTED] was included in the FAP budget. (Exhibit A, pp. 43-47) Accordingly, the evidence supports Petitioner's testimony that before Petitioner's FAP case actually closed based on the failure to return the New Hire Report, Petitioner contacted the Department regarding a change in her employment status. The Department was able to obtain verification of both the new employment and the prior employment that was the subject of the New Hire Report. The Department re-determined Petitioner's current eligibility because they had all needed information at that time. At the hearing, the Department did not show that Petitioner's earned income from employment, as shown on the budgets, was inaccurate or that the budget was improperly calculated. Overall, the evidence does not support the Department's determination that Petitioner received an overissuance of FAP benefits from January 1, 2021 to September 30, 2021 due to an agency error.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner received a \$3,678.00 overissuance of FAP benefits from January 1, 2021 through September 30, 2021 that must be recouped.

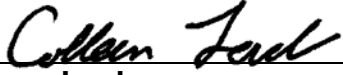
DECISION AND ORDER

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:

1. Delete the \$3,678.00 FAP overissuance in its entirety and cease any recoupment/collection action.

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-Calhoun-Hearings
MDHHS-RECOUPMENT-HEARINGS
M. Holden
D. Sweeney
MOAHR
BSC3HearingDecisions

Sent via First-Class Mail:

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