



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: May 4, 2022
MOAHR Docket No.: 22-001309
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 27, 2022, from Lansing, Michigan. ██████████ the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Eugene Brown, Recoupment Specialist.

During the hearing proceeding the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-103.

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 March 15, 2022, ALJ Jeffrey Kemm issued a Hearing Decision finding that the Department did not properly determine that Petitioner owed the Department a debt of \$4,679.00 for FAP benefits that were overissued to her from January 2021 through August 2021. (Exhibit A, pp. 7-12)
2. ALJ Kemm found that Petitioner received \$3,620.00 in FAP benefits that she was not entitled to receive for the months of March 2021 through August 2021 and ordered the Department to redetermine the amount of the overissuance consistent

with his decision and issue a new notice of overissuance to Petitioner. (Exhibit A, pp. 10-11)

3. On March 16, 2022, a Notice of Overissuance was issued to Petitioner stating that a \$3,620.00 overissuance of FAP benefits occurred from March 1, 2021 through August 31, 2021 and would be recouped. (Exhibit A, pp. 13-18)
4. On March 21, 2022, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 4-5)

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.

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, January 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. 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, an agency error overissuance occurred because the Department did not properly budget Petitioner's income. (Exhibit A, p. 13) A prior hearing was held regarding recoupment of overissued FAP benefits. On March 15, 2022, ALJ Kemm issued a Hearing Decision finding that the Department did not properly determine that

Petitioner owed the Department a debt of \$4,679.00 for FAP benefits that were overissued to her from January 2021 through August 2021. (Exhibit A, pp. 7-12) Rather, ALJ Kemm found that Petitioner received \$3,620.00 in FAP benefits that she was not entitled to receive for the months of March 2021 through August 2021 and ordered the Department to redetermine the amount of the overissuance consistent with his decision and issue a new notice of overissuance to Petitioner. (Exhibit A, pp. 10-11)

On March 16, 2022, a Notice of Overissuance was issued to Petitioner stating that a \$3,620.00 overissuance of FAP benefits occurred from March 1, 2021 through August 31, 2021 and would be recouped. (Exhibit A, pp. 13-18) Accordingly, the Department properly redetermined the amount of the overissuance consistent with ALJ Kemm's decision.

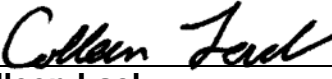
Petitioner questioned why she has to repay when it was the Department's error that caused the overissuance. (Petitioner Testimony) Pursuant to the above cited BEM 700 policy, when a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. This includes overissuances caused by either client errors or agency errors. Agency errors are not pursued if the estimated amount is less than \$250.00 per program. The overissuance at issue in this case exceeds \$250.00 in FAP benefits. Accordingly, the Department properly pursued recoupment of the \$3,620.00 overissuance at issue in this case.

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 \$3,620.00 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-Muskegon-Hearing
MDHHS-RECOUPMENT-HEARINGS
M. Holden
D. Sweeney
MOAHR
BSC3HearingDecisions

Sent via First-Class Mail:

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