



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 26, 2022
MOAHR Docket No.: 22-001316
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 April 20, 2022. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Tiffany Flemings, Assistant Payment Worker, and Walita Randle, Recoupment Specialist.

It is noted that although Petitioner Exhibits 1, 2, and 3 were discussed and admitted as evidence during the hearing, Petitioner failed to timely file the documents with the undersigned after the hearing as instructed. Thus, Exhibits 1, 2, and 3 are excluded from the formal record and only Exhibit A, which was properly filed and admitted, remains.

ISSUE

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

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 ██████████ 2021, Petitioner applied for FAP benefits for a group size of two, consisting of herself and her minor child, ██████████ ██████████ (Son). Petitioner reported living at ██████████, ██████████, MI (Home) (Exhibit A, pp.59-64).
2. On ██████████ 2021, ██████████ ██████████ submitted an application for Medical Assistance (MA), reporting that he lived at Home (Exhibit A, pp. 48-56).

3. On [REDACTED], 2022, Petitioner submitted a renewal of FAP benefits to MDHHS reporting that only Son and herself live at Home (Exhibit A, pp. 57-58).
4. From September 1, 2021 to February 28, 2022, Petitioner was issued \$ [REDACTED] in FAP benefits, including pandemic supplements (Exhibit A, pp. 16-18).
5. On March 16, 2022, MDHHS issued a Notice of Overissuance to Petitioner informing her that she was overissued FAP benefits from September 1, 2021 to February 28, 2022 in the amount of \$ [REDACTED]. The overissuance (OI) was due to Petitioner's failure to report that [REDACTED] [REDACTED] was in the home. MDHHS alleges that Petitioner failed to report [REDACTED] [REDACTED] in her home and because they have a child in common, Son, he is a mandatory group member with earned income that must be included in the household budget. [REDACTED] [REDACTED] has an active MA case with the same address as Petitioner and MDHHS failed to do an address clearance, therefore the OI was deemed to be due to agency error. (Exhibit A, pp. 5-10).
6. On March 23, 2022, Petitioner timely requested a hearing to dispute that she was overissued FAP benefits, stating that [REDACTED] [REDACTED] does not live with her (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 requested a hearing to dispute that she was overissued FAP benefits due to agency error. MDHHS alleges that Petitioner failed to report [REDACTED] [REDACTED] in her home and because they have a child in common, Son, he is a mandatory group member with earned income that must be included in the household budget.

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 agency error OI is caused by incorrect action (including delayed or no action) by MDHHS staff or department processes. BAM 700, p. 5.

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 alleges that [REDACTED] [REDACTED] is a mandatory group member because he lives with and has a child in common with Petitioner. MDHHS argues that [REDACTED] [REDACTED]'s earned income must be included in Petitioner's household budget and since it was not, Petitioner was overissued FAP benefits. FAP budget calculations require the consideration of the group size. MDHHS will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (October 2020), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212, p. 6. Parents and their children under 22 years of age who live together must be in the same FAP group.

MDHHS focused its investigation on proving that [REDACTED] [REDACTED] lives at Home and whether he has earned income that must be included in Petitioner's household budget. MDHHS operated its investigation under the assumption that [REDACTED] [REDACTED] is the father of Son. However, Petitioner credibly testified that [REDACTED] [REDACTED] is actually the uncle of Son; Son's father is [REDACTED] [REDACTED] [REDACTED] [REDACTED]'s brother. It is noted that Son is also named [REDACTED] [REDACTED]. MDHHS admitted at the hearing that this could have been confusion on their part regarding the [REDACTED] brothers. Petitioner was directed to submit Son's birth certificate as well as any supporting documentation regarding [REDACTED] [REDACTED] being Son's father. However, Petitioner did not submit those exhibits as instructed and they are now excluded from the formal record. Petitioner testified that [REDACTED] [REDACTED] is homeless, so she allows him to use Home as his address to receive mail. It is noted by MDHHS on Petitioner's [REDACTED] 2022 FAP renewal that "another individual is listed at the address, but client said the individual does not live there" (see Exhibit A, p. 57). MDHHS has not presented evidence that [REDACTED] [REDACTED] and Petitioner have a child in common or alleged other criteria under which [REDACTED] [REDACTED] would be an eligible group member in Petitioner's FAP group. Since there has been insufficient evidence that [REDACTED] [REDACTED] should have been included in Petitioner's FAP group, his income must be excluded from Petitioner's FAP household budget. Therefore, Petitioner was not overissued FAP benefits based upon incorrect group size and unreported income.

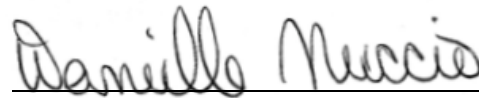
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that MDHHS did not act in accordance with Department policy when it determined that Petitioner had been overissued FAP benefits due to agency error.

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 \$██████ FAP overissuance for September 1, 2021 to February 28, 2022 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-Wayne-18-Hearings
MDHHS-Recoupment-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

First-Class Mail Recipient:

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