



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: May 20, 2022
MOAHR Docket No.: 22-001741
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 May 18, 2022, from Lansing, Michigan. The Petitioner was represented by [REDACTED] [REDACTED] Petitioner. The Department of Health and Human Services (Department or Respondent) was represented by Eugene Brown, Recoupment Specialist.

Respondent's Exhibit A pages 1-183 were admitted as evidence.

ISSUE

Did the Department properly determine that Petitioner was overissued Food Assistance Program (FAP) benefits which 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. Petitioner was a Food Assistance Program benefit recipient.
2. Petitioner was a Simplified Benefit recipient.
3. On [REDACTED] [REDACTED] [REDACTED] the Department received Petitioner's DHS 1010; it was noted on the document that Petitioner was pregnant with a due date of December 14, 2016, no source of income noted on the form.

4. On July 1, 2016, the Department issued a DHS 3503 with a due date of July 11, 2016 along with a DHS Self Employment statement for the months of April, May and June.
5. The verifications were not returned.
6. On July 19, 2016, the Department sent Petitioner a Notice of Case Action indicating that Petitioner as approved from August 1, 2016-July 31, 2017 for \$511 in monthly FAP benefits for a family household group of three persons. The notice indicated that Petitioner's monthly income after deductions was \$ [REDACTED]
7. The Notice indicated: SIMPLIFIED REPORTING: Effective the date of this notice, the only change you are required to report for the Food Assistance program is: WHEN YOUR HOUSEHOLD INCOME EXCEEDS THE LIMIT LISTED BELOW.

Household Size: 3
Income Limit: \$ 2177.00

When must you report

If your household has an increase in income (earned or unearned), you must see if your household's gross* monthly income is now over the limit. At the end of the month, total your gross income and compare it to your monthly income limit. If your income is more than the limit mentioned above, you must report this to your specialist by the 10th of the following month. Whenever you do report a gross income amount that is over the limit for your household, be sure to say whether you think the increased income will continue beyond the report month. If your income is less than the amount mentioned above, you do not need to report the income change. *Gross income means the amount of **all** earned and unearned income before any deductions, such as taxes, are taken out.

8. On December 8, 2016, the Department received a statement regarding Petitioner's source of income.
9. On December 12, 2016, the Department received Petitioner's notification that the child was born November 23, 2016. Live together partner was in the home as of November 23, 2016.
10. On June 13, 2017, the Department issued a DHS 1605, notifying Petitioner that FAP was set to decrease effective July 1, 2017.
11. On July 27, 2017, the Department completed processing Petitioner's DHA 1010. A DHS 1605 was issued to the Petitioner with notification that FAP will resume for period of August 1, 2017-July 31, 2018. Petitioner was designated as a Simplified Reporter, income Limit \$2633.00.
12. The Department determined that error in budgeting income caused an agency error/FAP over-issuance \$2960.00 for the time period of April 1, 2017-July 31, 2017.

13. It was determined that Petitioner was overpaid \$2960.00 in Food Assistance Program benefits.
14. On March 29, 2022, the department notified Petitioner that she had an over issuance of Food Assistance Program benefits which would be recouped in the amount \$2960.00 (April 2017 - \$771; May 2017 - \$771; June 2017 - \$771; July 2017 - \$647).
15. On [REDACTED] [REDACTED] [REDACTED] the department received a request for hearing to contest the department's negative action.
16. A prehearing conference was held on April 18, 2022. Petitioner requested to continue with the hearing process.
17. On April 19, 2022, the Michigan Administrative Hearing System received a hearing summary and attached documents.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

The Department alleges that a DHS 4701 was received. It was discovered that the Department did not address client's failure to return required verification with a due date of July 11, 2016, which caused agency error. As a result of Agency error overissuance claim (#100008044344) has been established in the amount of \$2960.00 for the period of April 1, 2017-July 31, 2017. Months of August 1, 2016-March 31, 2017 were excluded from overissuance as

Department is not allowed to recoup, as the amount of time allowed per policy (72 months) has elapsed. (Page 117)

Petitioner alleges that she remained eligible for FAP benefits and would have turned in documentations when asked. Petitioner alleges that she was not overissued the amount determined by the Department.

Pertinent Department policy dictates:

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130, page 1

The client must obtain required verification, but the local office must assist if they need and request help. If neither the client nor the local office can obtain verification despite a reasonable effort, **use the best available information. If no evidence is available, use your best judgment.** BAM 130, page 3 (Emphasis Added)

Food assistance groups with countable earnings, as currently defined in the BEM 500 series, are assigned to the simplified reporting (SR) category. This reporting option increases Food Assistance Program (FAP) participation by employed households and provides workload relief. Simplified reporting groups are required to report only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. No other change reporting is required. BAM 200, page 1

Groups meeting the SR category at application and redetermination are assigned a 12-month benefit period and are required to have a semi-annual contact. For applications and redeterminations, SR begins the first month of eligibility.

The only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information.

For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. Groups report if their actual income for a month exceeds 130 percent of poverty level. **QC uses the actual income when determining whether a client should have reported;** see BAM 715. BAM 200, page 6

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1 (1/1/2016).

Recoupment is a MDHHS action to identify and recover a benefit over issuance. A recoupment specialist (RS) is the specialist assigned to process over issuances and act as liaison with OIG, reconciliation and recoupment section (RRS), and other personnel involved with recoupment and collections. BAM 700 page 2

An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or Department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between Department divisions such as services staff.
- Data exchange reports were not acted upon timely (wage match, new hires, BENDEX, etc.).

If unable to identify the type, record it as an agency error. FIP, SDA, CDC and FAP Agency errors are not pursued if the estimated amount is less than \$250 per program. BEM 700, page 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. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, and any of the following occurred:

- The hearing request is later withdrawn.
- MAHS denies the hearing request.
- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.
- The hearing decision upholds the Department's actions; see BAM 600. BAM 700 page 7

When a potential over issuance is discovered, the following actions must be taken:

1. Immediately correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
2. Obtain initial evidence that an over issuance potentially exists.
3. Determine if it was caused by Department, provider or client actions.
4. Refer any over issuances needing referral to the RS within 60 days of suspecting one exists.

Exception: Office of Quality Assurance (OQA) discovered over issuances must be referred to the RS within 7 days of receipt of the OQA findings. OQA has already verified one exists. FIP, SDA, CDC and FAP Within 60 days of suspecting an over issuance exists, complete a DHS-4701, Over issuance Referral, and refer the following over issuances to the RS for your office:

- All client and agency errors over \$250.
- All suspected IPV errors.
- All CDC provider errors BAM 700 page 10

In this case, the Department failed to determine whether an over issuance occurred. The Department failed to establish how much Petitioner might have received in overissued Food Assistance Program benefits.

First, the Department has now determined that Petitioner's case should have closed in 2016 because the Department alleges that Petitioner failed to turn in verification during the requisite time period. It is clear based upon the evidence provided by the Department that Petitioner was in contact with the Department in 2016 and 2017 at various times as it issued Notices of Case Action to Petitioner on July 19, 2016, January 19, 2017, June 13, 2017, and July 27, 2017. On December 29, 2016, Petitioner provided a letter (signed by [REDACTED] [REDACTED] to the Department which indicated that Petitioner cleaned twice a week for \$60.00 plus \$10.00 for gas in exchange for rent and utilities. (Page 159) Also attached to the documents are a 2016 1040 US Individual Income Tax Return which indicated that Petitioner's household received \$ [REDACTED] in household income for the year. (Pages 160-166) A June 13, 2016, Redetermination was completed which showed that there was a three-person household and that Petitioner was pregnant and due to give birth [REDACTED] [REDACTED] (Page 168)

Second, it appears that Petitioner was self-employed. The Department submitted Petitioner's 2015 tax returns which has no bearing on Petitioner's eligibility for FAP in 2016 or 2017. Though the Department indicates that Petitioner did not return proof of income by July 11, 2016, there is no documentation contained in the file to establish that Petitioner possessed such proof of income or that Petitioner was not in touch with the caseworker to tell the caseworker that Petitioner had no income. The Department approved Petitioner for FAP based on no income. No one who personally worked on this file was present to testify as to what occurred during the requisite time period. If Petitioner received income during that time, the Department must determine how much income Petitioner had at the time (for each month in question) and whether that amount of income precluded Petitioner's household from being eligible to receive FAP during the requisite time periods.

Third, the Department has not provided any calculations or budgets for the months of April 30, 2017, through July 31, 2017 which would establish that Petitioner was not eligible to receive any FAP benefits during that time period based upon her income, nor was evidence submitted which establishes that Petitioner was overissued benefits which must be recouped.

Fourth, on June 13, 2017, the Department issued a DHS 1605, notifying Petitioner that FAP was set to decrease effective July 1, 2017. Obviously, the Department had received enough information to determine that the FAP benefits must be changed,

which indicates that the Department had sufficient information to determine Petitioner's continued eligibility for FAP benefits at the time and did so.

Fifth, a blanket statement by the Department's Recoupment Specialist (who did not work on this case in 2016 and 2017) that Petitioner's case should have been closed because there is no evidence that the verification checklist was completed and returned is not sufficient to establish grounds to establish a basis for recoupment of benefits.

The Department has not established its case by a preponderance of the evidence. The Department has not established how it determined that Petitioner was over issued any amount of benefits in this case.

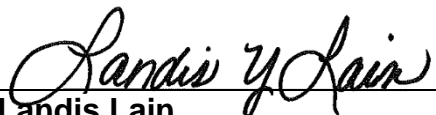
DECISION AND ORDER

The Department has not established by the necessary material, substantial or competent evidence on the record that it was acting in compliance with Department policy when it proposed to recoup \$2960.00 in Food Assistance Program benefits from Petitioner.

Accordingly, the Department's decision to attempt to recoup FAP benefits from Petitioner is **REVERSED as the Department has not established grounds for recoupment in this case in accordance with Department policy.**

It is so ORDERED.

LL/ml


Landis Lain
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.

Electronic Mail Recipients:

MDHHS-Genesee-UnionSt-Hearings
BSC2
MDHHS-Recoupment
M. Holden
D. Sweeney
MOAHR

First Class Mail Recipient:

[REDACTED]
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