



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: September 14, 2022
MOAHR Docket No.: 22-003476
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on September 7, 2022, from Lansing, Michigan. Petitioner represented herself. The Department was represented by Rolla Ley and Donna Dunford.

ISSUES

Did the Department of Health and Human Services (Department) properly close Petitioner's Food Assistance Program (FAP) benefits?

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits during the period of March 1, 2022, through June 30, 2022, due to client error?

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits during the period of July 1, 2022, through July 31, 2022, due to Department error?

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 ██████████ ██████████ ██████████ the Department received Petitioner's application for Food Assistance Program (FAP) benefits as a household of one. Exhibit A, pp 5-15.
2. Department records indicate that on August 13, 2021, Petitioner participated in an eligibility interview where she reported that she was living with her boyfriend but that they did not purchase and prepare food together. Exhibit A, pp 16-18.

3. On August 13, 2021, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of one not receiving any income. Exhibit A, pp 56-63.
4. Petitioner's son was born on [REDACTED] [REDACTED]
5. On June 22, 2022, the Department received Petitioner's Redetermination form where she reported that there were three people living in her home including her son born on February 5, 2022. Exhibit A, pp 19-23.
6. The father of Petitioner's son received earned income from employment in the gross quarterly amount of \$[REDACTED] for the first quarter of 2022. Exhibit A, p 53.
7. On July 17, 2022, the Department granted Petitioner a \$250 allotment of Food Assistance Program (FAP) benefits and a \$95 of supplemental benefits. Exhibit A, p 45.
8. On July 20, 2022, the Department sent Petitioner a Notice of Overissuance instructing her that she had received a \$1,380 overissuance of Food Assistance Program (FAP) benefits during the period of March 1, 2022, through June 30, 2022, due to client error. Exhibit A, pp 36-37.
9. On July 20, 2022, the Department sent Petitioner a Notice of Overissuance instructing her that she had received a \$345 overissuance of Food Assistance Program (FAP) benefits during the period of July 1, 2022, through July 31, 2022, due to Department error. Exhibit A, pp 38-43.
10. On [REDACTED] [REDACTED] the Department received Petitioner's request for a hearing.

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) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq*, and Mich Admin Code, R 400.3001 through 400.3011.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1. A recipient claim is an

amount owed because of benefits that are overpaid and the Department must establish and collect any claim. 7 CFR 273.18(a).

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons reside in an eligible living situation. Parents and their children must be in the same FAP benefits group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2022), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (July 1, 2020), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (July 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.

On August 12, 2021, the Department received Petitioner's application for FAP benefits as a household of one. On August 13, 2021, Petitioner reported that she was living with her boyfriend but that they did not purchase and prepare food together.

The hearing record supports a finding that Petitioner gave birth to a son on February 5, 2022, and that her boyfriend is the father of her son. As the parents, Petitioner, her son, and her boyfriend must all be included in Petitioner's FAP benefit group as directed by BEM 212.

Petitioner had a duty to report the birth of her son within 10 days. If Petitioner had reported the birth of her son and the increase of household income from his father in a timely manner, the Department would have acted on that information within 10 days, the change of Petitioner's eligibility for FAP benefits would have been pending for 12 days, and the Department would have redetermined her eligibility for FAP benefits by the first benefit period after March 9, 2022.

The Department alleges that Petitioner failed to report the birth of her son, which was a change to her circumstances that affected her eligibility for ongoing FAP benefits. When a person is added to a FAP benefit group, the change to the household's eligibility for ongoing FAP benefits is effective the month after the change is reported, but the change to household income resulting in a reduction of FAP benefits requires timely notice. BAM 220.

The hearing record supports a finding that the father of Petitioner's son received earned income from employment in the first quarter of 2022. No evidence of countable household income during the second quarter of 2022 was entered into the hearing record. Further, no overissuance budgets were offered as hearing exhibits for the period of March 1, 2022, through June 30, 2022. The Department failed to establish that the overissuance period should begin on March 1, 2022, because Petitioner would have been entitled to timely notice of her FAP benefits closure or reduction. The Department also failed to establish the overissuance amount due to client error because no evidence of earned income in the second quarter of 2002 was entered into the hearing record.

The Department did submit an overissuance budget for July of 2022 in its hearing exhibits. In the overissuance budget, the Department alleges that the father of Petitioner's son received earned income in the gross monthly amount of \$█████ Exhibit A, p 50. The hearing record supports a finding that Petitioner's household received earned income in the gross quarterly amount of \$█████ in the first quarter of 2022. Dividing the quarterly income by 12 weeks, dropping the cents, and converting that amount into a prospective monthly income by multiplying by the 4.3 conversion factor produces a gross monthly income of \$█████

Where improper reporting of income caused an overissuance, the Department is directed to use actual income for that income source. For FAP overissuances, the Department is not to convert the averaged monthly income reported on a wage match. Department of Health and Human Services Bridges Administrative Manual (BAM) 715 (October 1, 2017), p 8. In this case, income for the third quarter of 2022 was not documented in the Department's exhibits, and it appears that a prospective monthly income was applied to determine the overissuance amount for July of 2022.

Petitioner's FAP benefits in July of 2022 included a 15% increase of benefits made available under the American Rescue Plan of 2021. This extra federally funded 15% supplement is not subject to recoupment by the Department. The Department failed to establish that it properly determined the overissuance amount for July of 2022.

On August 2, 2022, the Department received Petitioner's oral request for a hearing. The Department is directed by BAM 600 to complete a DHS-18 when an oral request for a hearing is received. If the DHS-18 was completed in this case, it was not included in the hearing exhibits.

At her hearing, Petitioner testified that she was protesting the recoupment of FAP benefits and the closure of FAP benefits due to excess income. The hearing record does not establish that Petitioner's household income for July of 2022, exceeded the limit for her to remain eligible for any FAP benefits. The Department alleges that Petitioner was not eligible for any FAP benefits in July of 2022 but applied income from the first quarter of 2002 to reach this determination. Therefore, the Department has not met its burden of establishing that the closure of her FAP benefits was in accordance with policy.

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 client error overissuance, a Department error overissuance, and that closure of Food Assistance Program (FAP) benefits was proper due to excess income.


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. Initiate a determination of the Petitioner's eligibility for Food Assistance Program (FAP) benefits effective August 1, 2022.
2. Provide the Petitioner with written notice describing the Department's revised eligibility determination.
3. Issue the Petitioner any retroactive benefits she may be eligible to receive, if any.
4. The Department is ORDERED to delete the overissuance for claim [REDACTED] and cease any recoupment action.
5. The Department is ORDERED to delete the overissuance for claim [REDACTED] and cease any recoupment action.

KS/nr



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

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

Via Electronic Mail:

DHHS

Lacey Whitford
Isabella County DHS
1919 Parkland Drive
Mt. Pleasant, MI 48858

Interested Parties

Isabella County DHHS
BSC2
M. Holden
D. Sweeney
MOAHR

Via First Class Mail:

Petitioner

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