



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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

Date Mailed: November 29, 2022
MOAHR Docket No.: 22-004967
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 November 23, 2022, from Lansing, Michigan. [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Jennifer Braxmaier, Recoupment Specialist.

During the hearing proceeding, the Department's Hering Summary packet was admitted as Exhibit A, pp. 1-52.

ISSUE

Did the Department properly determine that Petitioner's group received Food Assistance Program (FAP) benefits that they were 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 31, 2021, Petitioner filed a Renew Benefits for FAP. The household of five included [REDACTED] Petitioner reported the end of her self-employment on August 5, 2019. In the additional changes section, Petitioner indicated she had tried to remove the self-employment every time she renewed for the last couple years. Petitioner had not received money from [REDACTED] in at least two years, she does not work with them anymore, and her only income was from [REDACTED] (Exhibit A, pp. 46-48)

2. On February 8, 2022, Petitioner submitted a Renew Benefits for FAP. Two changes were reported: a change of address to [REDACTED] MI as of August 16, 2021; and the end of Petitioner's self-employment and start of her employment at [REDACTED] as of February 8, 2022. There were no changes reported regarding the five household members, which included [REDACTED]. In the additional changes section, Petitioner indicated she had tried to remove the self-employment from her profile for years and she had not been self-employed in close to four years. (Exhibit A, pp. 43-45)
3. On March 31, 2022, a Notice of Case Action was issued to Petitioner approving FAP for a household size of five, including [REDACTED]. A budget summary was included showing [REDACTED] of earned income was included in the FAP budget. The Notice also advised Petitioner of her responsibility to report changes. Specifically, Petitioner was a simplified reporter (SR) and was required to report when the household gross monthly income exceeded [REDACTED] (Exhibit A, pp. 36-40)
4. On March 31, 2022, a Simplified Six Month Review was issued to Petitioner, further explaining the process. This advised that instead of coming in for a review every six months, Petitioner would receive a Semi-Annual Contact Report form in the mail to complete. In part, Petitioner would be required to provide information about changes in household address, household members, and household income. (Exhibit A, pp. 41-42)
5. On September 4, 2022, Petitioner submitted a change report stating [REDACTED] moved out of the home August 1, 2022. (Exhibit A, pp. 31-32)
6. The Department verified Petitioner's income from employment with [REDACTED] [REDACTED] from January 31, 2020 through September 23, 2022. (Exhibit A, pp. 23-26)
7. The Department verified [REDACTED] income from employment with [REDACTED] [REDACTED] from April 1, 2022 through September 23, 2022. An employee address of [REDACTED] in [REDACTED] MI was reported. (Exhibit A, pp. 27-30)
8. Petitioner received ongoing and emergency allotment (EA) FAP benefits of \$992.00 per month for July 2022 through September 2022. (Exhibit A, pp. 13-14)
9. The Department determined that for July 2022 through September 2022, Petitioner received a total of \$2,976.00 of FAP benefits, but was not eligible for FAP benefits during that period. (Exhibit A, pp. 15-21)
10. On September 27, 2022, the Department sent Petitioner a Notice of Overissuance instructing her that a \$2,976.00 overissuance of FAP benefits occurred from July 1, 2022 through September 30, 2022 and would be recouped. (Exhibit A, pp. 7-12)

11. On October 14, 2022, the Department received Petitioner's verbal request for a hearing, contesting the recoupment of FAP benefits. (Exhibit A, p. 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.

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, April 1, 2022, p. 9. For FAP, simplified reporting households must report when the household monthly income exceeds the monthly gross income limit for its household size. 7 CFR 273.12(a)(5)(ii)(G)(1) Similarly, Department policy regarding FAP simplified reporting states:

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.

Exception: Simplified Reporting groups must report lottery and gambling winnings of \$3,750 or more.

If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group's SR income limit; see RFT 250, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR.

Note: Changes known to the department must be acted on even though the client is required to report only if the group's

total gross income exceeds the SR income limit for their group size.

SR does not change reporting requirements for any other program.

BAM 200, April 1, 2022, p. 1.

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, April 1, 2022, pp. 7-8.

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. 13.

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.

In this case, the Department determined that a FAP OI occurred due to client error. Specifically, Petitioner failed to report when household income exceeded the SR limit starting in May 2022. Household member [REDACTED] had started employment, resulting in an increase in household income.

On October 31, 2021, Petitioner filed a Renew Benefits for FAP. The household of five included [REDACTED]. Petitioner reported the end of her self-employment on August 5, 2019. In the additional changes section, Petitioner indicated she had tried to remove the self-employment every time she renewed for the last couple years. Petitioner had not received money from [REDACTED] in at least two years, she does not work with them anymore, and her only income was from [REDACTED] (Exhibit A, pp. 46-48)

On February 8, 2022, Petitioner submitted a Renew Benefits for FAP. Two changes were reported: a change of address to [REDACTED], MI as of August 16, 2021; and the end of Petitioner's self-employment and start of her employment at [REDACTED] as of February 8, 2022. There were no changes reported regarding the five household members, which included [REDACTED]. In the additional changes section, Petitioner indicated she had tried to remove the self-employment from her profile for years and she had not done any self-employment in close to four years. (Exhibit A, pp. 43-45)

On March 31, 2022, a Notice of Case Action was issued to Petitioner approving FAP for a household size of five, including [REDACTED]. A budget summary was included showing [REDACTED] of earned income was included in the FAP budget. The Notice also advised Petitioner of her responsibility to report changes. Specifically, Petitioner was a simplified reporter and was required to report when the household gross monthly

income exceeded [REDACTED] (Exhibit A, pp. 36-40) On March 31, 2022, a Simplified Six Month Review was issued to Petitioner, further explaining the process. This advised that instead of coming in for a review every six months, Petitioner would receive a Semi-Annual Contact Report form in the mail to complete. In part, Petitioner would be required to provide information about changes in household address, household members, and household income. (Exhibit A, pp. 41-42)

On September 4, 2022, Petitioner submitted a change report stating [REDACTED] moved out of the home August 1, 2022. (Exhibit A, pp. 31-32)

The Department verified Petitioner's income from employment with [REDACTED] [REDACTED] from January 31, 2020 through September 23, 2022. (Exhibit A, pp. 23-26) The Department verified [REDACTED] income from employment with [REDACTED] [REDACTED] from April 1, 2022 through September 23, 2022. An employee address of [REDACTED] MI was reported. (Exhibit A, pp. 27-30)

The Department added the unreported earned income of [REDACTED] to the FAP budgets. The Department determined that Petitioner's group had exceeded the applicable SR limit each month starting in May 2022. (Exhibit A, pp. 15-21) If Petitioner had timely reported this increased income, the Department would have redetermined FAP eligibility by July 1, 2022.

Petitioner received ongoing and EA FAP benefits of \$992.00 per month for July 2022 through September 2022. (Exhibit A, pp. 13-14) The Department determined that for July 2022 through September 2022, Petitioner received a total of \$2,976.00 of ongoing and EA FAP benefits, but was not eligible for ongoing and EA FAP benefits during that period. (Exhibit A, pp. 15-21) Therefore, Petitioner received a \$2,976.00 overissuance of ongoing and EA FAP benefits.

Petitioner testified that in March 2022, she and [REDACTED] separated for a planned divorce. Petitioner asked him to get a job and move out. After he got a job, he moved to his mother's cabin. Petitioner asserted that during an April renewal she removed [REDACTED] [REDACTED] as a household member. Petitioner asserted that this reported change did not take in the Department's computer system and [REDACTED] is still listed as a household member. Petitioner further testified that she wrote August in error on the change report and she meant to report that he moved out in April. (Petitioner Testimony)

However, Petitioner did not submit a renewal in April 2022. Petitioner submitted a renewal on February 8, 2022, in which she reported the change in address for the household as well as the ongoing error regarding removing her self-employment. At that time, Petitioner did not report any change in household members. (Exhibit A, pp. 43-45) Petitioner did not report that [REDACTED] had moved out of the home until she submitted the September 4, 2022 change report, on which she reported he left the home August 1, 2022. A verification checklist was issued on April 13, 2022, as well as a new hire for [REDACTED] but there is no documentation of Petitioner reporting he was no longer a household member at that time. (Exhibit A, pp. 31-33 and 50-51) Accordingly, the Department properly considered [REDACTED] a household member

through September 2022 as there is no record of Petitioner having reported this change in household composition until the September 4, 2022 change report.

Regardless of whether the error was a mistake or intentional, BAM 700 is clear that 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.

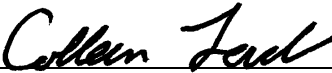
Overall, the failure to report and verify the change with the household's gross earned income that exceeded the applicable SR limit resulted in a \$2,976.00 overissuance of FAP benefits from July 1, 2022, through September 30, 2022, based on the information that was available to the Department.

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 \$2,976.00 overissuance of FAP benefits that must be recouped.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

CL/ml



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

Via Electronic Mail :

DHHS

Barbara Schram - 35
Iosco County DHHS
2145 East Huron Road
East Tawas, MI 48730

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235 S Grand Ave
Lansing, MI 48909

**MDHHS-RECOUPMENT-
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Interested Parties

BSC1
M. Holden
D. Sweeney
MOAHR

Via First Class Mail :

Petitioner

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