



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: January 12, 2023
MOAHR Docket No.: 22-005791
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 January 5, 2023, from Lansing, Michigan. [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Annette Fullerton, Recoupment Specialist.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-67.

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. From January 1, 2018 to July 31, 2018, Petitioner received FAP benefits totaling \$1,195.00. (Exhibit A, pp. 16-19)
2. On [REDACTED] 2017, Petitioner submitted an Assistance Application for FAP for herself as the only household member. Petitioner reported she was homeless. (Exhibit A, pp. 52-65)
3. During a November 3, 2017 interview, Petitioner reported she and her daughter live with a friend that does not charge them rent. (Exhibit A, p. 66)

4. On November 7, 2017, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two, including Petitioner's daughter D.E., from December 1, 2017 to October 31, 2018 in the amount of \$175.00 per month. Petitioner was reminded of the responsibility to report changes, including changes in the number of persons living in the home, within 10 days. A blank Change Report form was included. (Exhibit A, pp. 34-39)
5. On March 17, 2018, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two, including Petitioner's daughter D.E., from April 1, 2018 to October 31, 2018 in the amount of \$170.00 per month. Petitioner was reminded of the responsibility to report changes, including changes in the number of persons living in the home, within 10 days. (Exhibit A, pp. 40-43)
6. The Department confirmed that Petitioner's daughter D.E. received food assistance benefits from the state of Indiana from December 20, 2017 to July 31, 2018 with her uncle and aunt. (Exhibit A, pp. 47-51)
7. During an August 22, 2018 interview, Petitioner confirmed that her daughter was not currently in the home and she would be picking her up that weekend or the next with the assistance of law enforcement. (Exhibit A, p. 66)
8. The Department determined that Petitioner was overissued FAP benefits from January 1, 2018 to July 31, 2018 due to Petitioner's failure to report D.E. was not in her home and was receiving food benefits from the state of Indiana. (Exhibit A, pp. 19-33)
9. On November 1, 2022, the Department sent Petitioner a Notice of Overissuance instructing her that a \$1,090.00 overissuance of FAP benefits occurred from January 1, 2018 to July 31, 2018 due to client error and would be recouped. (Exhibit A, pp. 7-12)
10. On [REDACTED] 2022, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 3-5)

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, October 1, 2017, p. 9. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes any changes with persons in the home. (BAM 105, pp. 11-13)

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, October 1, 2017, p. 7. A pended 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, the Department determined that a FAP client error overissuance occurred from January 1, 2018 to July 31, 2018 due to Petitioner inaccurately reporting her daughter was in the home and failing to report that her daughter was receiving food assistance benefits from the state of Indiana. (Exhibit A, pp. 19-33, 47-51, and 66)

Petitioner testified that she had been in a mental health facility, then prison around the time period at issue. Petitioner noted that she has seizures. Petitioner does not remember all this happening. Petitioner acknowledged that her daughter was temporarily with her brother in Indiana when Petitioner was in the mental health facility and prison. Petitioner was not aware that they had applied for any benefits for her daughter from the state of Indiana. (Petitioner Testimony)

The above cited BAM 700 policy requires the Department to recoup the overissuance when a client group receives more benefits than it is entitled to receive. This includes overissuances caused by both agency errors and client errors when the amount is at least \$250 per program.

Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits from January 1, 2018 to July 31, 2018 due to client error. Petitioner did not report her daughter was in the household on the [REDACTED] 2017 Assistance Application. (Exhibit A, pp. 52-65) However, during an

interview that same day, Petitioner reported she and her daughter live with a friend that does not charge them rent. (Exhibit A, p. 66) Accordingly, Petitioner's daughter was included in Petitioner's FAP group. The Notices of Case Action issued to Petitioner showed that D.E. was included in the FAP group. (Exhibit A, pp. 34-43) There is no evidence that Petitioner reported D.E. was not in the home until the August 22, 2018 interview. (Exhibit A, p. 66) Even if Petitioner was unaware that her brother arranged for D.E. to receive food assistance benefits from the State of Indiana, Petitioner either failed to accurately report her household composition during the November 3, 2017 interview or, failed to timely report a change from the anticipated composition she reported during the interview and as reflected on the Notices of Case Action approving FAP.

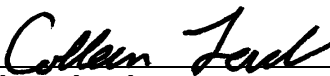
When the corrected household composition was utilized to redetermine eligibility for the FAP group, it was determined that the Petitioner was not eligible for the full amount of FAP benefits issued. (Exhibit A, pp. 19-33) The Department properly sought recoupment of a \$1,090.00 overissuance of FAP benefits from Petitioner.

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 the \$1,090.00 overissuance of FAP benefits from January 1, 2018 to July 31, 2018 due to client error, which 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 :

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