



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: February 3, 2023
MOAHR Docket No.: 22-006131
Agency No.: ██████████
Petitioner: ██████████

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 26, 2023, from Lansing, Michigan. ██████████, the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Kathleen Zewatsky, Recoupment Specialist.

During the hearing proceeding, the Department's hearing summary packet was admitted as Exhibit A, pp. 1-69.

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 March 2021, May 2021, and June 2021, Petitioner received FAP benefits in the amount of ██████████ (Exhibit A, pp. 14-15)
2. On ██████████ 2020, Petitioner submitted an Assistance Application for FAP and reported income from ██████████ of ██████████ per week. Petitioner also reported that she was unable to work due to COVID-19. (Exhibit A, pp. 63-68)
3. On November 16, 2020, a Notice of Case Action was issued to Petitioner approving FAP effective December 1, 2020. A budget summary was included showing no earned income was included in the FAP budget at that time.

Petitioner was notified 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. 37-41)

4. On November 16, 2020, 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. Petitioner would be required to provide information about changes in address and housing expense, household members, child support payments, and household income. (Exhibit A, pp. 42-43)
5. On March 17, 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one effective April 1, 2021. A budget summary was included showing no earned income was included in the FAP budget. Petitioner was reminded of the responsibility to report changes, including changes with income, within 10 days. (Exhibit A, pp. 32-36)
6. On March 24, 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one effective May 1, 2021. A budget summary was included showing no earned income was included in the FAP budget. Petitioner was reminded of the responsibility to report changes, including changes with income, within 10 days. (Exhibit A, pp. 27-31)
7. An Employee Wage History report showed that Petitioner had employment income from [REDACTED] [REDACTED] from the fourth quarter of 2020 through the second quarter of 2021. (Exhibit A, pp. 44-45)
8. Verification from [REDACTED] [REDACTED] documented Petitioner's earnings from October 9, 2020 through March 26, 2021. (Exhibit A, pp. 46-48)
9. The Department also verified Petitioner's income from unemployment compensation benefits (UCB) from July 11, 2020 through June 26, 2021. (Exhibit A, pp. 50-54)
10. On April 30, 2021, Petitioner submitted a Renew Benefits reporting income from UCB. (Exhibit A, pp. 61-62)
11. On June 29, 2021, Petitioner submitted a Health Care Coverage Supplemental Questionnaire and reported employment at [REDACTED] with a start/end/change date of June 10, 2021. (Exhibit A, pp. 57-60)
12. The Department determined that Petitioner was overissued FAP benefits during March 2021, May 2021, and June 2021 due to the Petitioner's failure to report when her income exceeded the simplified reporting limit. (Exhibit A, pp. 17-26)
13. On December 14, 2022, the Department sent Petitioner a Notice of Overissuance instructing her that a [REDACTED] overissuance of FAP benefits occurred from

March 1, 2021 to June 30, 2021 due to client error and would be recouped. (Exhibit A, pp. 7-12)

14. On December 27, 2022, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 4-5)

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, July 1, 2020, p. 9. Generally, Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes any changes with assets. BAM 105, pp. 11-13.

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, January 1, 2020, 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, July 1, 2020, 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. 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.

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, resulting in an overissuance of FAP benefits for March 2021, May 2021, and June 2021. The combination of income from employment with [REDACTED] and UCB caused Petitioner to exceed income limits for the FAP program.

On [REDACTED] 2020, Petitioner submitted an Assistance Application for FAP and reported income from [REDACTED] of [REDACTED] per week. Petitioner also reported that she was unable to work due to COVID-19. (Exhibit A, pp. 63-68). On November 16, 2020, a Notice of Case Action was issued to Petitioner approving FAP effective December 1, 2020. A budget summary was included showing no earned income was included in the FAP budget at that time. Petitioner was notified 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. 37-41). On November 16, 2020, 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. Petitioner would be required to provide information about changes in address and housing expense, household members, child support payments, and household income. (Exhibit A, pp. 42-43).

On March 17, 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one effective April 1, 2021. A budget summary was included showing no earned income was included in the FAP budget. Petitioner was reminded of the responsibility to report changes, including changes with income within 10 days. (Exhibit A, pp. 32-36). Accordingly, Petitioner became a change reporter rather than a simplified reporter. On March 24, 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one effective May 1, 2021. A budget summary was included showing no earned income was included in the FAP budget. Petitioner was reminded of the responsibility to report changes, including changes with income within 10 days. (Exhibit A, pp. 27-31). Accordingly, Petitioner remained a change reporter.

An Employee Wage History report showed that Petitioner had employment income from ██████████ LLC from the fourth quarter of 2020 through the second quarter of 2021. (Exhibit A, pp. 44-45). Verification from ██████████ LLC documented Petitioner's earnings from October 9, 2020 through March 26, 2021. (Exhibit A, pp. 46-48). The Department also verified Petitioner's income from unemployment compensation benefits (UCB) from July 11, 2020 through June 26, 2021. (Exhibit A, pp. 50-54).

On April 30, 2021, Petitioner submitted a Renew Benefits reporting income from UCB. (Exhibit A, pp. 61-62). On June 29, 2021, Petitioner submitted a Health Care Coverage Supplemental Questionnaire and reported employment at ██████████ with a start/end/change date of June 10, 2021. (Exhibit A, pp. 57-60).

The Department determined that Petitioner was overissued FAP benefits during March 2021, May 2021, and June 2021 due to the Petitioner's failure to report when her income exceeded the simplified reporting limit. The actual amount of FAP benefits issued to Petitioner in February 2021 and April 2021 was also more than the correct amount Petitioner was eligible for. However Petitioner was still eligible for ██████████ in FAP benefits for those months. In light of supplemental benefits being issued due to COVID-19, there was no overissuance for February 2021 and April 2021. (Exhibit A, pp. 17-26; Recoupment Specialist Testimony). It is noted that Petitioner became a change reporter as of the March 17, 2021 Notice of Case Action. Accordingly, only the overissuance for March 2021 was due to a failure to report when household income exceeded the simplified reporting limit. The overissuances for May 2021 and June 2021 were due to a failure to report a change in household income within 10 days. In total, Petitioner received a ██████████ overissuance of FAP benefits. (Exhibit A, pp. 7-12 and 17-26).

Petitioner testified that she lost her job in 2020 due to COVID and she became a substitute teacher. Petitioner had a long-term sub position starting in November 2020, but actually had a decrease in pay during the months at issue, March 2021 through June 2021. For example, there was a week off for spring break and in June she was only there for the first week and a half. Petitioner acknowledged that she filed for unemployment during such times. (Petitioner Testimony).

As discussed, the income verifications showed what Petitioner received each pay date. The combination of employment income and UCB exceeded income limits for the FAP program. (Exhibit A, pp. 1, 17-26, and 46-54).

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 the changes with the household's income resulted in a [REDACTED] overissuance of FAP benefits for March 2021, May 2021, and June 2021, based on the available information.

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 [REDACTED] 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

Tamara Little
Jackson County DHS
301 E. Louis Glick Hwy.
Jackson, MI 49201

MDHHS-Jackson-Hearings@michigan.gov

DHHS Department Rep.

Overpayment Research and Verification (ORV)
235 S Grand Ave
Lansing, MI 48909

**MDHHS-RECOUPMENT-
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Interested Parties

BSC4
M Holden
D Sweeney
MOAHR

Via First Class Mail :

Petitioner

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