



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: February 23, 2023
MOAHR Docket No.: 22-006307
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION
AMENDED TO REMOVE REFERENCE TO CLIENT ERROR ON PAGE 4
AND TO CORRECT SPELLING OF PETITIONER'S NAME

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 February 7, 2023, from Lansing, Michigan. The Petitioner was represented by [REDACTED] Sister and Guardian. The Department of Health and Human Services (Department) was represented by Sharion Hopson, Recoupment Specialist.

During the hearing proceeding the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-87.

ISSUE

Did the Department properly determine that Petitioner received Food Assistance Program (FAP) benefits that he 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 August 1, 2018 to July 31, 2019, Petitioner received FAP benefits in the amount of \$192.00 per month. (Exhibit A, pp. 16 and 41-42)
2. On [REDACTED] 2017, Petitioner submitted an Assistance Application for FAP. (Exhibit A, pp. 63-84)

3. On October 18, 2017, a written statement was provided to the Department to verify Petitioner's Adult Foster Care (AFC) medical expense of \$678.80 for medical/personal care. (Exhibit A, p. 56)
4. On November 6, 2017, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one. A budget summary was included showing a medical expense of \$644.00 was included in the FAP budget. (Exhibit A, pp. 57-62)
5. On May 4, 2018, Petitioner submitted a Redetermination. (Exhibit A, pp. 48-55)
6. The Department duplicated Petitioner's AFC medical expense in the FAP budget. (Exhibit A, pp. 9 and 43)
7. On June 12, 2018, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one. A budget summary was included showing a medical expense of \$1,323.00 was included in the FAP budget. (Exhibit A, pp. 44-47)
8. The Department determined that Petitioner was overissued FAP benefits from August 1, 2018 to July 31, 2019 due to the Department duplicating Petitioner's AFC medical expense in the FAP budget. (Exhibit A, pp. 9 and 16-40)
9. On December 13, 2022, the Department sent Petitioner a Notice of Overissuance instructing him that a \$1,480.00 overissuance of FAP benefits occurred from August 1, 2018 to July 31, 2019 due to agency error and would be recouped. (Exhibit A, pp. 10-15)
10. On December 28, 2022, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 7-8)

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, 2021, p. 9. 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).

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, November 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. 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. 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 agency error overissuance occurred from August 1, 2018 to July 31, 2019 due to the Department duplicating Petitioner's AFC medical expense in the FAP budget. (Exhibit A, pp. 9 and 16-40).

On [REDACTED] 2017, Petitioner submitted an Assistance Application for FAP. (Exhibit A, pp. 63-84). On October 18, 2017, a written statement was provided to the Department to verify Petitioner's AFC medical expense of \$678.80 for medical/personal care. (Exhibit A, p. 56). On November 6, 2017, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one. A budget summary was included showing a medical expense of \$644.00 was included in the FAP budget. (Exhibit A, pp. 57-62).

On May 4, 2018, Petitioner submitted a Redetermination. (Exhibit A, pp. 48-55). The Department duplicated Petitioner's AFC medical expense in the FAP budget. (Exhibit A, pp. 9 and 43). On June 12, 2018, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one. A budget summary was included showing a medical expense of \$1,323.00 was included in the FAP budget. (Exhibit A, pp. 44-47). The Department determined that Petitioner was overissued FAP benefits from August 1, 2018 to July 31, 2019 due to the Department duplicating Petitioner's AFC medical expense in the FAP budget. (Exhibit A, pp. 9 and 16-40).

Petitioner's sister testified that it was not fair to recoup the overissuance from Petitioner when it was caused by an agency error, especially when it occurred so long ago. (Sister 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 agency errors when the amount is at least \$250 per program.

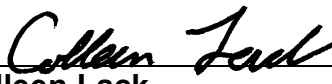
Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits from August 1, 2018 to July 31, 2019 due to the agency error of duplicating Petitioner's AFC medical expense in the FAP budget. The Department properly sought recoupment of a \$1,480.00 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 \$1,480.00 overissuance of FAP benefits from August 1, 2018 to July 31, 2019 due to agency 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 :

DHHS
Kim Cates
Bay County DHS
1399 W. Center Road
Essexville, MI 48732
MDHHS-Bay-Hearings@michigan.gov

DHHS Department Rep.
Overpayment Research and Verification (ORV)
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**MDHHS-RECOUPMENT-
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Interested Parties
BSC2
M Holden
D Sweeney
MOAHR

Via First Class Mail :

Authorized Hearing Rep.

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Petitioner

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