



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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██████████, MI ██████████

Date Mailed: May 31, 2023
MOAHR Docket No.: 23-002524
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 May 25, 2023, via conference line. Petitioner was present and was unrepresented. The Department of Health and Human Services (Department) was represented by Jason Morris, Eligibility Specialist.

ISSUE

Did Petitioner receive an overissuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing FAP recipient between the period of July 1, 2019, through March 31, 2020 (Exhibit A, pp. 65-94).
2. On May 28, 2019, Petitioner submitted an application for FAP benefits (Exhibit A, pp. 86-93). Petitioner reported that she did not have income from employment.
3. On May 19, 2019, the Department ran a Consolidated Inquiry report showing Petitioner had income from employment.
4. On May 30, 2019, the Department sent Petitioner a Verification Checklist (VCL) and did not request income verification from Petitioner (Exhibit A, pp. 28-29).

5. On June 11, 2019, Petitioner completed an interview with the Department related to her FAP application (Exhibit A, pp. 84-85). Petitioner again reported that she was not working and had no income.
6. On June 11, 2019, the Department sent Petitioner a Notice of Case Action informing her that she was approved for FAP benefits and that her FAP benefits were based on \$0 of earned income (Exhibit a, pp. 30-33).
7. On February 25, 2020, Petitioner submitted a Wage Match Client Notice showing she had income during the period of July 1, 2019, through March 31, 2020 (Exhibit A, pp. 71-80).
8. On April 11, 2023, the Department sent Petitioner a Notice of Overissuance informing her that she was overissued FAP benefits for the period of July 1, 2019, through March 31, 2020, in the amount of \$2,712 due to Agency error (Exhibit A, pp. 15-16).
9. On April 17, 2023, Petitioner submitted a request for hearing disputing the Department's actions.

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.

In this case, Petitioner submitted an application for FAP benefits on May 28, 2019. Petitioner reported that she did not have income from employment. On May 29, 2019, the Department ran a Consolidated Inquiry (CI) report, which showed Petitioner had income from employment. Despite the information provided by the CI report, Petitioner was not asked to verify her income, nor was she asked about her income at the interview completed on June 11, 2019. Petitioner continued to report that she did not have income. Although Petitioner did not report the income to the Department, the Department categorized the overissuance as an agency error, as the Department did not act on the CI report.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2016), pp. 6-7.

Despite the information provided by the CI report, the Department did not include Petitioner's earned income in the calculation of her FAP benefit amount throughout the period of July 1, 2019, through March 31, 2020. As such, the Department testified that Petitioner's FAP benefit amount was improperly calculated, as the earned income from Petitioner's employment should have been included in her FAP budget. The Department testified that Petitioner was overissued FAP benefits for the period of July 1, 2019, through March 31, 2020, in the amount of \$2,712 due to agency error.

When a client group receives more benefits that it is entitled to receive, the Department **must** attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. An agency error is caused by incorrect action by the Department staff or department processes. BAM 700, p. 4. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705 (January 2016), p. 6. If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source when determining the correct benefit amount. BAM 705, p. 8.

The Department presented an employment income verification showing Petitioner's wages during the period of July 1, 2019, through March 31, 2020. The Department also presented Petitioner's FAP budget during the overissuance period showing that no earned income was included in the calculation of Petitioner's FAP benefit eligibility. As such, the Department correctly determined Petitioner's earned income was not properly budgeted, and she was overissued FAP benefits as a result of agency error.

The Department presented Petitioner's Benefit Summary, which showed she was issued \$3,341 in FAP benefits for the period of July 1, 2019, through March 31, 2020. The Department presented overissuance budgets for the same time period (Exhibit A, pp. 22-43). The Department recalculated Petitioner's FAP benefits by adding her earned income for each month as shown on the employment verification. The budgets show that during the period of July 1, 2019, through March 31, 2020, Petitioner was entitled to \$629 in FAP benefits.

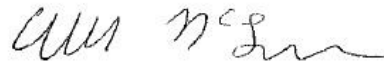
The Department conceded that it erred when it included March 2020 in the overissuance period. Per the overissuance budgets, the Department determined Petitioner was entitled to \$16 in FAP benefits in March 2020. However, Petitioner was issued the maximum amount of \$355 for her group size. The Department, under direction of the Federal government, provided an emergency allotment to address temporary food needs due to the COVID-19 pandemic-related economic conditions. Policy Exception Memorandum issued by the Economic Stability Administration (ESA) in response to the COVID-19 crisis number 2020-15, issued March 26, 2020. Active

FAP groups who were not receiving the maximum benefit amount for their group size, received a supplement to bring their benefit amount up to the maximum amount allowed for their group size. ESA 2020-15, issued March 26, 2020. Therefore, Petitioner's benefit issuance amount of \$355 was correct. Thus, the Department erred when it included the \$339 overissuance amount for March 2020, and the overissuance amount will be reduced by \$339. As it follows, the Department established it properly determined Petitioner was overissued FAP benefits in the amount of \$2,373.

DECISION AND ORDER

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 Petitioner received an overissuance of FAP benefits in the amount of \$2,373. Accordingly, the Department's decision is **MODIFIED**.

EM/tm



Ellen McLemore
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
Renee Olian
Kalamazoo County DHHS
427 E Alcott St
Kalamazoo, MI 49001
**MDHHS-Kalamazoo-
Hearings@michigan.gov**
DHHS Department Rep.

Overpayment Establishment Section
(OES)
235 S Grand Ave Ste 811
Lansing, MI 48909
**MDHHS-RECOUPMENT-
HEARINGS@Michigan.gov**

Interested Parties:

M. Holden
D. Sweeney
BSC4

Via-First Class Mail :

Petitioner

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