



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
██████████
██████████, MI ██████████

Date Mailed: July 3, 2023
MOAHR Docket No.: 23-002833
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 June 28, 2023, from Lansing, Michigan. The Petitioner was represented by ██████████ Daughter. ██████████ the Petitioner, was present. The Department of Health and Human Services (Department) was represented by Dawn McKay, Recoupment Specialist.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-40.

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 August 1, 2022 to May 31, 2023, Petitioner received FAP benefits totaling \$4,497.00. (Exhibit A, p. 21)
2. On ██████████ 2022, Petitioner applied for FAP for a household of two, herself and her spouse. It was reported that both Petitioner and her spouse were US Citizens or Nationals. (Exhibit A, pp. 5-11)

3. On June 27, 2022, a Notice of Case Action was issued approving FAP effective June 10, 2022. A Simplified Six Month Review was also issued explaining the simplified reporting process. (Exhibit A, pp. 12-18)
4. Copies of the Permanent Resident cards show that Petitioner and her husband are not US Citizens, they have been residents since February 6, 2020, and both have a category of IR5. (Exhibit A, pp. 19-20)
5. The Department determined that Petitioner was overissued FAP benefits from August 1, 2022 to May 31, 2023 due to agency error based on benefits being approved in error. To be eligible for FAP, Petitioner and her spouse must have been in the US for five years. (Exhibit A, pp. 1 and 35)
6. On May 11, 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$4,497.00 overissuance of FAP benefits occurred from August 1, 2022 to May 31, 2023 due to agency error and would be recouped. (Exhibit A, pp. 35-40)
7. On May 22, 2023, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 3-4)

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. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. 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. A change report by tape match is to be acted upon within 15 workdays. BAM 220, April 1, 2022, 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. 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, 2022 to May 31, 2023 due to agency error based on benefits being approved in error. (Exhibit A, pp. 1 and 35).

On ██████████ 2022, Petitioner applied for FAP for a household of two, herself and her spouse. It was reported that both Petitioner and her spouse were US Citizens or Nationals. (Exhibit A, pp. 5-11). On June 27, 2022, a Notice of Case Action was issued approving FAP effective June 10, 2022. A Simplified Six Month Review was also issued explaining the simplified reporting process. (Exhibit A, pp. 12-18).

However, Copies of the Permanent Resident cards show that Petitioner and her husband are not US Citizens, they have been residents since February 6, 2020, and both have a category of IR5. (Exhibit A, pp. 19-20). The Department determined that Petitioner was overissued FAP benefits from August 1, 2022 to May 31, 2023 due to agency error based on benefits being approved in error. To be eligible for FAP, Petitioner and her spouse must have been in the US for five years. (Exhibit A, pp. 1 and 35). Accordingly, on May 11, 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$4,497.00 overissuance of FAP benefits occurred from August 1, 2022 to May 31, 2023 due to agency error and would be recouped. (Exhibit A, pp. 35-40).

Petitioner's daughter reviewed the application and acknowledged that a mistake was made. However, copies of the green cards were provided to the Department. (Daughter Testimony).

As noted on the Notice of Overissuance, the overissuance was considered an agency error, rather than a client error. (Exhibit A, pp. 35-40). 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, 2022 to May 31, 2023 due to an agency error. As shown by the copies of the Permanent Resident cards, Petitioner and her spouse were not US citizens or Nationals, had not been in the US for five years, and


did not have a class code that would have allowed for FAP prior to the five year period. (Exhibit A, pp. 19-20). Therefore, the Department properly sought recoupment of a \$4,497.00 overissuance of FAP benefits from Petitioner for the benefits issued from August 1, 2022 to May 31, 2023.

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 \$4,497.00 overissuance of FAP benefits from August 1, 2022 to May 31, 2023 due to an 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
Cindy Tomczak
Berrien County DHHS
401 Eighth Street
Benton Harbor, MI 49023
MDHHS-Berrien-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
BSC3
M Holden
D Sweeney
MOAHR

Via First Class Mail:

Authorized Hearing Rep.

██████████
████████████████████
██████████ MI ██████████

Via First Class Mail:

Petitioner

[REDACTED]

[REDACTED]

[REDACTED] MI [REDACTED]