



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

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Date Mailed: December 21, 2023
MOAHR Docket No.: 23-006755
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 November 28, 2023, from Lansing, Michigan. █████ █████ the Petitioner, appeared on her own behalf. █████ █████ husband, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Alison Peck, Overpayment Analyst.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-94. The hearing record was left open for the Department to submit the additional expense documentation they received from Petitioner and the budgets that considered the expenses. The self-employment documentation was received and has been admitted as Exhibit B, pp. 1-494.

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 December 2017 to November 2018 Petitioner received FAP benefits totaling \$██████████ (Exhibit A, pp. 10-11)
2. On November █████ 2017, Petitioner submitted a Redetermination and reported: her husband had self-employment with a gross amount of \$██████████ that is irregular;

her income from SSI of \$ [REDACTED] monthly; and yearly income for herself and her husband of \$ [REDACTED] (Exhibit A, pp. 56-63)

3. On November [REDACTED] 2017, a Notice of Case Action was issued to Petitioner approving FAP for a household size of four. A budget summary was included showing: no earned income; self-employment income of \$ [REDACTED] and unearned income of \$ [REDACTED] was included in the FAP budget. The Notice indicated Petitioner's household was a simplified reporting household and they were only required to report when the gross monthly household income exceeded \$2,665.00. (Exhibit A, pp. 64-68)
4. On April [REDACTED] 2018, Petitioner submitted a Semi-Annual Contact Report and reported there had been no changes. (Exhibit A, pp. 69-70)
5. On May [REDACTED] 2018, a Notice of Case Action was issued to Petitioner approving FAP for a household size of four. A budget summary was included showing: no earned income; self-employment income of \$ [REDACTED] and unearned income of \$ [REDACTED] was included in the FAP budget. The Notice indicated Petitioner's household was a simplified reporting household and they were only required to report when the gross monthly household income exceeded \$2,665.00. (Exhibit A, pp. 71-75)
6. On August [REDACTED] 2018, Petitioner submitted a copy of the 2017 tax return Schedule C. (Exhibit A, pp. 43-44 and 46)
7. On October [REDACTED] 2018, Petitioner submitted a Redetermination and reported her husband had self-employment with a gross amount of \$ [REDACTED] that is irregular; her income from SSI of \$ [REDACTED] monthly. (Exhibit A, pp. 76-83)
8. On November [REDACTED] 2018, an interview was completed with Petitioner. Self-employment income was reported for Petitioner's husband and SSI income was reported for Petitioner. (Exhibit A, pp. 84-85)
9. On November [REDACTED] 2018, a Notice of Case Action was issued to Petitioner closing the FAP case for a household size of four. A budget summary was included showing: no earned income; self-employment income of \$ [REDACTED] and unearned income of \$ [REDACTED] was included in the FAP budget. (Exhibit A, pp. 86-89)
10. The Department verified Petitioner Social Security Administration issued SSI benefit income. (Exhibit A, p. 42)
11. On November [REDACTED] 2019, Petitioner submitted a copy of the 2018 tax return Schedule C. (Exhibit A, pp. 45-46)
12. The Department verified child support payments. (Exhibit A, pp. 48-52)
13. The Department received verification of property taxes and insurance. (Exhibit A, pp. 53-55)

14. The Department failed to end business expenses from 2015, which continued to be included in the FAP budgets from December 2017 to November 2018. (Exhibit A, pp. 3 and 10)
15. The Department determined that Petitioner was overissued FAP benefits from December 1, 2017 to November 30, 2018 in the amount of \$ [REDACTED] due to agency error of failing to end self-employment expenses from 2015. Petitioner did not provide self-employment expenses with the 2017 and 2018 tax returns. (Exhibit A, pp. 3 and 16-41)
16. On September [REDACTED] 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$ [REDACTED] overissuance of FAP benefits occurred from December 1, 2017 to November 30, 2018 due to agency error and would be recouped. (Exhibit A, pp. 10-15)
17. On October 13, 2023, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 5-8)

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, 2017, p. 9. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes changes with income. 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, October 1, 2017, 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. 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.

The Department determined that Petitioner was overissued FAP benefits from December 1, 2017 to November 30, 2018 in the amount of \$ [REDACTED] due to agency error of failing to end self-employment expenses from 2015. The Department alleged that Petitioner did not provide self-employment expenses with the 2017 and 2018 tax returns. (Exhibit A, pp. 3 and 16-41).

It is not clear what documentation Petitioner submitted with the 2017 and 2018 tax returns. On August [REDACTED] 2018, Petitioner submitted a copy of the 2017 tax return Schedule C. (Exhibit A, pp. 43-44 and 46). On or about November 4, 2019, Petitioner submitted a copy of the 2018 tax return Schedule C. (Exhibit A, pp. 45-46). However, the electronic case file documents that there were additional submission of tax returns and income verifications on October 1, 2018, November 7, 2018, and October 10, 2019. (Exhibit A, p. 46). It does not appear that these verifications were included in the Department's Hearing Summary packet. Further, it does not appear that the Department ever requested additional verification from Petitioner, such as the self-employment expenses.

Petitioner and her husband noted that when the Department is approving FAP benefits, they utilize the prior years tax information but when calculating the overpayment, the Department utilized the tax information for that year. (Petitioner and Husband Testimony). When approving FAP benefits, the Department prospectively the income for the certification period because those months are in the future. When calculating and overissuance, those are no longer future months and verification of the income during the actual time period is available. Further, it is noted that during the certification period, Petitioner would have been responsible for timely reporting any change from the prospected income amounts, which would have led to a redetermination of eligibility for FAP during the certification period.

The Department subsequently received numerous receipts from Petitioner as documentation of self-employment expenses. (Exhibit B, pp. 1-494). However, the Department did not submit the updated budgets showing that even after the expenses were considered in the FAP budgets, there was no change in the overissuance amounts.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner received the \$ [REDACTED] overissuance of FAP benefits from December 1, 2017 to November 30, 2018 due to agency error. Therefore, the recoupment of a \$ [REDACTED] overissuance of FAP benefits from Petitioner cannot be upheld at this time.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine Petitioner's eligibility for FAP for the time period of December 1, 2017 to November 30, 2018 in accordance with Department policy.

CL/dm



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
Rose Ward
Newaygo County DHHS
**MDHHS-Newaygo-
Hearings@michigan.gov**

DHHS Department Rep.
Overpayment Establishment Section
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HoldenM

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BSC3HearingDecisions

Via-First Class Mail :

**MOAHR
Petitioner**

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