



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR



Date Mailed: November 29, 2023

MOAHR Docket No.: 23-006877

Agency No.: [REDACTED]

Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 21, 2023, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Bernice Ray Recoupment Specialist. Department Exhibit 1, pp. 1-61 was received and admitted.

ISSUE

Did the Department properly determine that Petitioner received an overissuance of Food Assistance Program(FAP) benefits due to client error?

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 a recipient of FAP benefits.
2. Petitioner was included in the FAP group in error beginning in January 2023 when she was under a sanction from the Office of Child Support and she should not have been included in the FAP Group.
3. On September 29, 2023, Notice of Overissuance was sent to Petitioner alleging that she received an overissuance of FAP benefits in the amount of \$3,015 from

March 1, 2021, through October 31, 2021, because she did not report a household member's income.

4. On October 12, 2023, Petitioner requested hearing disputing the determination of overissuance.

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.

AGENCY ERROR EXCEPTIONS

FIP, SDA, CDC and FAP

Agency error overissuances are not pursued if the estimated amount is less than \$250 per program. BAM 705 (October 2018)

OVERISSUANCE PROCESSING

FIP, SDA, CDC and FAP

Agency errors (other than CDC **system** errors) are not pursued if the amount is under \$250 per program. BAM 705 (October 2018)

In this case, household member [REDACTED] employment income from [REDACTED] was not budgeted during the alleged overissuance period. Petitioner credibly testified that she did report the income and provided check stubs to the Department. Petitioner testified that she always submits all requested information to the Department portal and questioned the reliability of the portal based on her past experiences.

The Department representative testified that the case notes did not reflect that Petitioner reported the new income and points out that Petitioner would have received a Notice of Case Action after new information was submitted and no Notice of Case Action was sent to her.

Petitioner's testimony that she submitted the updated income information in a timely manner is found to be credible.

However, Petitioner still had income that was not budgeted and she received benefits she was not entitled to. Therefore, it is found that Petitioner received \$3,015, in FAP benefit from the time period from March 1, 2021, through October 30, 2021, due to agency error. Department policy requires that agency error overissuances be recouped if they are over \$250. BAM 705. At hearing, Petitioner questioned why she should be responsible for repaying an overissuance that resulted from a Department error. It was explained that recipients are responsible for repaying overissuances that resulted from Department error if the overissuances are over \$250.

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 an overissuance of FAP benefits in the amount of \$3,015 during the time period from March 1, 2021, through October 31, 2021. However, the overissuance should have been characterized as Department error instead of client error.


DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED** in part with regard to the finding of client error and **AFFIRMED** with regard to the finding of overissuance in the amount of \$3,015.

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. Remove the designation of client error overissuance and change it to Department error.

AM/ml



Aaron McClintic
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
B Cabanaw
N Denson-Sogbaka
MOAHR

Via First Class Mail:

Petitioner

[REDACTED]
MI [REDACTED]