



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: December 21, 2023
MOAHR Docket No.: 23-007802
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 December 20, 2023, from Lansing, Michigan. The Petitioner was represented by herself. [REDACTED] also appeared and testified for Petitioner. The Department of Health and Human Services (Department) was represented by Eugene Brown. Department Exhibit 1, pp. 1-132 was received and admitted.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) and Family Independence Program (FIP) cases and determine that Petitioner received an overissuance of Food Assistance Program (FAP) and Family Independence Program (FIP) benefits because her husband was residing in her home and should have been included in the household?

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 FIP and FAP benefits.
2. On October 3, 2023, Notice of Case Action was sent to Petitioner informing her that FIP and FAP were closing effective November 1, 2023.

3. On November 2, 2023, Notice of Overissuance was sent to Petitioner alleging that she received an overissuance of FAP benefits in the amount of \$3,170 from May 1, 2023, through September 30, 2023, and an overissuance of FIP benefits in the amount of \$2,100 for the time period from May 1, 2023, through September 30, 2023, because her husband was residing in the home and his income was not budgeted.
4. On November 14, 2023, Petitioner requested hearing disputing the determination of overissuance and closure of FIP and FAP.
5. Petitioner testified at hearing that her husband [REDACTED] does not reside with her at her address [REDACTED] MI [REDACTED]
6. [REDACTED] testified that he does not reside with Petitioner and in fact resides at [REDACTED] Michigan [REDACTED]
7. The FEE agent concluded that [REDACTED] was residing with Petitioner because he listed her address on [REDACTED] as his address with his probation officer and with his employer. (Ex. 1, pp. 121-123)

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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.

Client Error

All Programs

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.

Spouses

Spouses who are legally married and live together must be in the same group. BEM 212.

Living With

Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share only an access area such as an entrance or hallway or non-living area such as a laundry room are not considered living together. BEM 212.

In this case, the Department alleges that Petitioner's husband [REDACTED] resides with her at [REDACTED]. A Fee Investigation was completed by Agent [REDACTED]. Agent [REDACTED] contacted Mr. [REDACTED] probation officer who gave [REDACTED] as [REDACTED] address and for his employer. Nothing in Mr. [REDACTED] report shows that he attempted to contact [REDACTED] by phone or letter and nothing in his report shows that he made an in person visit to the [REDACTED] address or the [REDACTED] address. Agent [REDACTED] did not testify at hearing.

Petitioner testified at hearing that her husband [REDACTED] does not reside with her at [REDACTED]. [REDACTED] testified that he does not reside with Petitioner on [REDACTED] and he resides at [REDACTED]. [REDACTED] testified that he listed his address as [REDACTED] when he was released from jail in March 2023 but he began residing at [REDACTED] Ave. within a week of his release. [REDACTED] testified that his address for the probation department is now listed as the [REDACTED] address. [REDACTED] testified that he lists the [REDACTED] address with his employer and other important documents as a matter of convenience.

The Department failed to present sufficient proof to establish that [REDACTED] is residing with Petitioner at [REDACTED]. [REDACTED] testimony that he resides at [REDACTED] is found to be credible. Petitioner's testimony that her husband does not reside with her is also found to be credible.

It should be noted that Petitioner has an obligation to cooperate with the Department to establish a child support order if she and her husband are not residing together even if she remains married and once that support order is in place it will likely reduce her FIP and FAP grants. However, that issue was not before the undersigned Administrative Law Judge.

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 closed Petitioner's FIP and FAP cases and determined that Petitioner received an overissuance of FIP and FAP benefits.

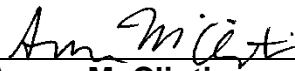
DECISION AND ORDER

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. Reinstate FIP and FAP benefits going back to the date of closure.
2. Award Petitioner a supplement for any missed FIP and FAP benefits.

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

Heather Dennis
Jackson County DHHS
301 E. Louis Glick Hwy.
Jackson, MI 49201

MDHHS-Jackson-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

BSC4

M Holden

B Cabanaw

N Denson-Sogbaka

MOAHR

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]