



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 1, 2023
MOAHR Docket No.: 23-007096
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 21, 2023, from Lansing, Michigan. ██████ ██████ the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Jennifer Braxmaier, Overpayment Establishment Analyst (OEA).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-105.

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 June 1, 2021 to August 31, 2021 Petitioner received FAP benefits totaling \$██████████ (Exhibit A, pp. 75-80)
2. On November ██████ 2020, Petitioner submitted an Assistance Application for FAP for herself and her daughter. It was reported that the only household income was from child support and unemployment benefits. (Exhibit A, pp. 8-13)

3. During a December ■ 2020 interview, Petitioner reported she was no longer working due to COVID-19 cutbacks and was receiving child support and unemployment benefits. (Exhibit A, pp. 14-16)
4. The Department verified the unemployment benefits and child support income. (Exhibit A, pp. 17-24)
5. On December ■ 2020, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. A blank Change Report form was included. (Exhibit A, pp. 25-32)
6. On January ■ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two with an increased monthly amount. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. (Exhibit A, pp. 33-37)
7. On March ■ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two with an increased monthly amount. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. (Exhibit A, pp. 38-41 and 47)
8. On June ■ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two with an increased monthly amount. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. (Exhibit A, pp. 42-46)
9. On August ■ 2021, Petitioner submitted a Renew Benefits and reported changes with income, including changed unemployment benefits and adding employment with ■ (Exhibit A, pp. 48-52)
10. On September ■ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing earned income of \$■ was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes. Specifically, Respondent was a simplified reporter and was only required to report when the household gross monthly income exceeded \$1,888.00. A change in income over this amount was to be reported by the 10th day of the following month. A Simplified Six Month Review was included. (Exhibit A, pp. 53-59)
11. An Earnings Request documented Petitioner's earnings from employment with ■ from April 2, 2021 to October 22, 2021. (Exhibit A, pp. 60-72)
12. The Department re-verified the child support income. (Exhibit A, pp. 73-74)

13. The Department determined that Petitioner was overissued FAP benefits from June 1, 2021 to August 31, 2021 in the amount of \$██████████ due to client error of not reporting the employment income from ██████████ as well as agency errors of failing to budget child support income and incorrectly budgeting a child support expense Petitioner did not have. (Exhibit A, pp. 1, and 80-98)
14. On October 4, 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$██████████ overissuance of FAP benefits occurred from June 1, 2021 to August 31, 2021 due to agency error and would be recouped. (Exhibit A, pp. 99-104)
15. On October 11, 2023, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 3-6)

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, July 1, 2020, 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, 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. 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 June 1, 2021 to August 31, 2021 in the amount of \$1,407.00 due to client error of not reporting the employment income from Taphouse as well as agency errors of failing to budget child support income and incorrectly budgeting a child support expense Petitioner did not have. (Exhibit A, pp. 1, and 80-98).

On November █ 2020, Petitioner submitted an Assistance Application for FAP for herself and her daughter. It was reported that the only household income was from child support and unemployment benefits. (Exhibit A, pp. 8-13). During a December █ 2020 interview, Petitioner reported she was no longer working due to COVID-19 cutbacks and was receiving child support and unemployment benefits. (Exhibit A, pp. 14-16). The Department verified the unemployment benefits and child support income. (Exhibit A, pp. 17-24). On December █ 2020, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. A blank Change Report form was included. (Exhibit A, pp. 25-32). On January █ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two with an increased monthly amount. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. (Exhibit A, pp. 33-37). On March █ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two with an increased monthly amount. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. (Exhibit A, pp. 38-41 and 47). On June █ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two with an increased monthly amount. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. (Exhibit A, pp. 42-46). On August █ 2021, Petitioner submitted a Renew Benefits and reported changes with income, including changed unemployment benefits and adding employment with █ (Exhibit A, pp. 48-52). On September █ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing earned income of \$█ was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes. Specifically, Respondent was a simplified reporter and was only required to report when the household gross monthly income exceeded \$1,888.00. A change in income over this amount was to be reported by the 10th day of the following month. A Simplified Six Month Review was included. (Exhibit A, pp. 53-59).

However, an Earnings Request documented Petitioner's earnings from employment with [REDACTED] from April 2, 2021 to October 22, 2021. (Exhibit A, pp. 60-72). The Department also re-verified the child support income. (Exhibit A, pp. 73-74).

The Department determined that Petitioner was overissued FAP benefits from June 1, 2021 to August 31, 2021 in the amount of \$ [REDACTED] due to client error of not reporting the employment income from Taphouse as well as agency errors of failing to budget child support income and incorrectly budgeting a child support expense Petitioner did not have. (Exhibit A, pp. 1, and 80-98). Accordingly, on October 4, 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$ [REDACTED] overissuance of FAP benefits occurred from June 1, 2021 to August 31, 2021 due to agency error and would be recouped. (Exhibit A, pp. 99-104).

Petitioner acknowledged that she did not report when she needed to and apologized for that. Petitioner explained that she may need a low payment plan, but she does not have a problem repaying the overissuance. (Petitioner Testimony).

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 client or 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 June 1, 2021 to August 31, 2021 in the amount of \$ [REDACTED] due to agency error. Therefore, the Department properly sought recoupment of a \$ [REDACTED] overissuance of FAP benefits from Petitioner.

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 \$ [REDACTED] overissuance of FAP benefits from June 1, 2021 to August 31, 2021 due to agency error, which must be recouped.

DECISION AND ORDER

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

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
Ashley Warner
Missaukee/Wexford County DHHS
**MDHHS-GR8North-
Hearings@michigan.gov**

DHHS Department Rep.
Overpayment Establishment Section
(OES)
**MDHHS-RECOUPMENT-
HEARINGS@Michigan.gov**

HoldenM

DensonSogbakaN

BSC1HearingDecisions

Via-First Class Mail :

**MOAHR
Petitioner**

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