



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

[REDACTED]
MI

Date Mailed: December 21, 2023
MOAHR Docket No.: 23-008200
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On November 13, 2023, Petitioner, [REDACTED] requested a hearing to dispute a notice of overissuance. Following Petitioner's hearing request, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 7 CFR 273.15, and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 20, 2023. Petitioner appeared and represented herself. Respondent, Department of Health and Human Services (Department), had LaCre Barnett, Overpayment Establishment Analyst, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 45-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly determine that Petitioner owes the Department a debt of \$857.00 for Food Assistance Program (FAP) benefits that were overissued to her for the month of September 2023?

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 is a FAP benefit recipient.
2. On November 18, 2022, the Department mailed Petitioner a notice of case action to notify Petitioner that she was approved for a monthly FAP benefit amount of

\$857.00, effective December 1, 2022, for a group size of four. The Department listed the four group members as Petitioner, [REDACTED] [REDACTED] and [REDACTED]. The Department instructed Petitioner to report all changes in household income to the Department within 10 days of the date of the change.

3. On July 10, 2023, [REDACTED] began employment at [REDACTED].
4. Petitioner attempted to report the employment to the Department within 10 days, but the Department did not record Petitioner's reported change, and the Department did not process the change.
5. The Department continued to issue FAP benefits to Petitioner without considering the additional household income from [REDACTED] employment.
6. [REDACTED] received the following earnings from his employment:
 - a. [REDACTED] paid July 20, 2023;
 - b. [REDACTED] paid on July 27, 2023;
 - c. [REDACTED] paid on August 3, 2023;
 - d. [REDACTED] paid on August 10, 2023;
 - e. [REDACTED] paid on August 17, 2023;
 - f. [REDACTED] paid on August 24, 2023;
 - g. [REDACTED] paid on August 31, 2023;
 - h. [REDACTED] paid on September 7, 2023;
 - i. [REDACTED] paid on September 14, 2023;
 - j. [REDACTED] paid on September 21, 2023; and
 - k. [REDACTED] paid on September 28, 2023.
7. The Department issued Petitioner \$857.00 in FAP benefits for September 2023.
8. The Department then discovered that [REDACTED] had been receiving income from employment that the Department had not been considering.
9. The Department recalculated Petitioner's September 2023 FAP benefit amount by adding [REDACTED] income, and the Department determined that Petitioner was not eligible for any FAP benefits for September 2023. The

Department processed [REDACTED] income as unreported income, which meant that Petitioner was not eligible for the 20% earned income deduction. The Department also did not use the \$165.00 medical deduction that had been used when the Department calculated Petitioner's FAP benefit amount of \$857.00.

10. On September 7, 2023, the Department issued a notice of overissuance to Petitioner to notify her that she was overissued \$857.00 in FAP benefits for September 2023 due to a client error.
11. Petitioner requested a hearing to dispute the notice 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) 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 administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, the Department determined that it overissued FAP benefits to Petitioner because it did not properly budget Petitioner's household income. When a client receives more benefits than she was entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 1, 2018), p. 1. The overissuance amount is the amount of benefits in excess of the amount the client was eligible to receive. *Id.* at p. 2. Based on the evidence presented, the Department overissued FAP benefits to Petitioner.

For the month of September 2023, the Department issued Petitioner a FAP benefit of \$857.00. The Department issued this FAP benefit to Petitioner without considering [REDACTED] earned income. This caused the Department to issue Petitioner more FAP benefits than what she was eligible to receive.

The Department determined that Petitioner's overissuance was due to a client error because Petitioner did not report [REDACTED] employment to the Department. Based on the evidence presented, Petitioner did report [REDACTED] employment to the Department, so the overissuance was actually due to an agency error. Since the overissuance was due to an agency error, Petitioner is eligible for the 20% earned income deduction.

The Department did not use a \$165.00 medical deduction when it determined the overissuance amount. Petitioner was granted a \$165.00 medical deduction when the Department originally determined Petitioner's \$857.00 FAP benefit amount, and there

was no evidence presented that Petitioner was no longer eligible for a \$165.00 medical deduction, so the \$165.00 medical deduction should have been used when the Department recalculated Petitioner's FAP benefit amount.

With the 20% earned income deduction and the \$165.00 medical deduction, Petitioner's net income was [REDACTED] for September 2023. With a net income of [REDACTED] and a group size of four, Petitioner was eligible for an \$85.00 FAP benefit for September 2023. Since Petitioner received a FAP benefit of \$857.00 when she was only eligible for a FAP benefit of \$85.00, Petitioner received a \$772.00 overissuance for September 2023.


Although the overissuance may have been caused by an agency error, Petitioner still owes the Department for the \$772.00 overissuance. A FAP overissuance that results from the Department's error must be pursued by the Department when the amount is greater than or equal to \$250.00. BAM 705 (October 1, 2018), p. 1. Thus, since the amount of the overissuance that Petitioner received was greater than or equal to \$250.00, the Department must pursue it.

DECISION AND ORDER

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 properly determined that Petitioner received an overissuance of FAP benefits for September 2023, but the Department did not properly determine the amount of the overissuance.

IT IS ORDERED that the Department's decision is **AFFIRMED IN PART** with respect to the Department's determination that Petitioner received an overissuance of FAP benefits for September 2023 and **REVERSED IN PART** with respect to the overissuance amount of \$857.00. The Department shall redetermine the overissuance amount consistent with this decision. The Department shall begin to implement this decision within 10 days of the date of mailing of this decision and order.

JK/ml



Jeffrey Kemm
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
Kim Cates
Bay County DHHS
1399 W. Center Road
Essexville, MI 48732
MDHHS-Bay-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
BSC2
M Holden
B Cabanaw
N Denson-Sogbaka
MOAHR

Via First Class Mail:

Petitioner
[REDACTED]
MI