



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: February 16, 2024
MOAHR Docket No.: 24-000263
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 February 8, 2024, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Rebecca Webber, Overpayment Establishment Analyst. Department Exhibit 1, pp. 1-209 was received and admitted.

ISSUE

Did the Department properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits due to agency 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. On November 21, 2023, a Quality Control Audit was completed which reviewed July 2023 and discovered several department errors.
3. Petitioner's husband had self-employment income from [REDACTED] that was not budgeted during the overissuance period from March 2022 through February 2023.
4. At redetermination in March 2023, Petitioner's husband self-employment income was budgeted but two 25% expense exclusions were given in error.

5. On January 4, 2024, Notice of Overissuance was sent to Petitioner alleging that she received an overissuance of FAP benefits in the amount of \$12,918 from December 1, 2022, through November 30, 2023, because he had employment income that was not budgeted correctly.
6. On January 8, 2024, 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)

OVERISSUAN CE 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)

SELF-EMPLOYMENT EXPENSES

Allowed

Allowable expenses include all the following: • Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc. • Interest and principal on loans for equipment, real estate,

or income-producing property. • Insurance premiums on loans for equipment, real estate, and other income-producing property. • Taxes paid on income-producing property. • Transportation costs while on the job (example: fuel). • Purchase of capital equipment. • A child care provider's cost of meals for children. Do not allow costs for the provider's own children. • Any other identifiable expense of producing self-employment income except those listed below. Note: Allowable expenses for rental/room and board are different than those listed above; see BEM 504, ALLOWABLE RENTAL EXPENSES. BEM 504 does not pertain to MAGI Medicaid determinations.

Not Allowed

Do not enter any of the following as self-employment expenses in Bridges: • A net loss from a previous period. • Federal, state, and local income taxes. • Personal entertainment or other individual business expenses. • Money set aside for retirement. • Depreciation on equipment, real estate, or other capital investments. BEM 502 (October 2019)

In this case, Petitioner received an overissuance due to agency error because there were months that her husband's self-employment income was not budgeted and there were months that it was budgeted but an incorrect amount of self-employment expenses was given. Petitioner was given an opportunity to submit receipts showing actual self-employment expenses, but she misunderstood whether expenses reported on the tax return had already been deducted and she did not submit actual expenses. Petitioner requested an opportunity to submit receipts and other proof of qualified self-employment expenses. The Department representative agreed at hearing to allow Petitioner to submit proof of self-employment expenses and recalculate the overissuance amount.

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. The Department agreed to allow Petitioner an opportunity to provide proof of actual self-employment expenses and recalculate Petitioner's overissuance amount.


DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the finding of overissuance and **REVERSED IN PART** with respect to the amount of the overissuance.

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. Petitioner will submit proof of all qualified self-employment expenses during the overissuance time period on or before March 1, 2024.
2. The Department will review all qualified self-employment expenses submitted by Petitioner on or before March 1, 2024, and recalculate the overissuance amount.
3. The Department will issue a Notice of Overissuance on or before March 29, 2024.

AM/nr



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

Chelsea McCune
Macomb County DHHS Warren Dist.
13041 E 10 Mile
Warren, MI 48089

**MDHHS-Macomb-20-
Hearings@michigan.gov**

Interested Parties

Macomb 20 County DHHS
MDHHS- Recoupment
N. Stebbins
MOAHR

DHHS Department Rep.

Overpayment Establishment Section
(OES)

235 S Grand Ave Ste 811
Lansing, MI 48909

**MDHHS-RECOUPMENT-
HEARINGS@Michigan.gov**

Via-First Class Mail :

Petitioner

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