



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON I. BROWN, DPA
DIRECTOR

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Date Mailed: March 8, 2024
MOAHR Docket No.: 24-000462
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 February 21, 2024, from Lansing, Michigan. █████ █████ the Petitioner, appeared on her own behalf. █████ █████ Husband, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Alison Peck, Overpayment Establishment Analyst (OEA).

During the hearing proceeding, the Department’s Hearing Summary packet was admitted as Exhibit A, pp. 1-118 and self-employment expense documentation the Department received from Petitioner was admitted as Exhibit B, pp. 1-494. Additional self-employment expense documentation was subsequently submitted which has been admitted as Exhibit 1, pp. 1-4.

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. On November █████ 2024, a hearing was held regarding the Department’s determination that Petitioner received an overpayment of FAP benefits that must be recouped. (Exhibit A, p. 15)

2. On December █ 2023, a Hearing Decision was issued ordering the Department to re-determine Petitioner's eligibility for FAP for the time period of December 1, 2017 to November 20, 2018 in accordance with Department policy. (Exhibit A, pp. 15-20)
3. On December █ 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$█ overissuance of FAP benefits occurred from December 1, 2017 to November 30, 2018 due to agency error and would be recouped. (Exhibit A, pp. 9-14)
4. On January 17, 2024, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 6-7)

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, October 1, 2017, 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, October 1, 2017, 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 December 1, 2017 to November 30, 2018 in the amount of \$6,518.00 due to agency error. The Department used actual monthly self-employment countable expenses to redetermine eligibility. (Exhibit A, p. 9). The Department utilized tax returns form 2017 and 2018 in conjunction with the receipts. However, the Department did not consider the mileage expenses because there were no receipts for this. The OEA explained that she consulted her supervisor and had been advised that expenses must have receipts to be considered. The OEA asked what kind of verification would be acceptable for mileage and did not get an answer. (Exhibit A, p. 3; OEA Testimony). Petitioner's husband explained that the work trucks are only used for work. Therefore, for taxes he only has to track the starting and ending mileage for the year. Petitioner's husband noted that there are no receipts that exist for mileage. Documentation of the mileage for the 2018 work year was submitted. (Exhibit 1; Husband Testimony).

Pursuant to the BEM 502 policy in effect at the start of the overissuance period, transportation costs (example fuel) while on the job are allowable. Additional allowable expenses include any other identifiable expense of producing self-employment income except those listed below. The non allowable expenses are: 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; and depreciation on equipment, real estate or other capital investments. BEM 502, July 1, 2017, pp. 3-4. For all programs except Medicaid, policy directs that self-employment expense verification is the Self-Employment Statement with receipts. BEM 502, July 1, 2017, p. 8.

Mileage is not specifically listed as an allowable or not allowable self-employment expense in the above cited BEM 502 policy. However, the policy does specify that transportation costs while on the job are allowable and lists fuel as an example. This would not exclude other types of transportation costs because fuel was only listed as an example. Further, the BEM 502 policy also allows for other types of identifiable expenses. Mileage is an identifiable expense for self-employment. Accordingly, the Department should allow this expense when verified and when it is not duplicative of other expenses (for example, milage would be duplicative of fuel costs if gas receipts were also submitted). Because a traditional receipt does not exist for mileage, other types of documentation should be utilized to verify this expense. For example, it appears that odometer readings are allowable verification for tax purposes. In this case, Petitioner has submitted the schedule C, which lists car and truck expenses, as well as the annual starting and ending milage for the vehicles for the 2018 work year. (Exhibit A, pp. 47-49; Exhibit 1, p. 1).

Additionally, Petitioner's husband indicated there were contractor labor expenses and provided a list of checks from 2018. (Husband Testimony, Exhibit 1, pp. 2-4). It appears

that this would also fall within the BEM 502 policy allowing for other identifiable expense of producing self-employment income that are not listed as non-allowable.

Petitioner and her husband also noted that when the Department is approving FAP benefits, they utilize information from the prior year but when calculating the overpayment, the Department utilized the actual information for those months. (Petitioner and Husband Testimony). When approving FAP benefits, the Department prospectively the income for the certification period because those months are in the future. When calculating and overissuance, those are no longer future months and verification of the income and expenses during the actual time period is available. Further, it is noted that during the certification period, Petitioner would have been responsible for timely reporting any change from the prospected income and expense amounts, which would have led to a redetermination of eligibility for FAP during the certification period.

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 determined that Petitioner received the \$[REDACTED] overissuance of FAP benefits from December 1, 2017 to November 30, 2018 due to agency error. Petitioner has reported that the self-employment expenses include mileage that the Department did not consider in calculating the overissuance. Transportation costs while on the job are allowable, as well as any other identifiable expense of producing self-employment income that are not listed as not allowed in the BEM 502 policy. If additional verification of the mileage expenses is needed, the Department should allow Petitioner the opportunity to provide the information and advise Petitioner what type of verification is acceptable for this type of expense. Similarly, there is documentation of contact labor expenses. If additional verification is needed, the Department should allow Petitioner the opportunity to provide the information and advise Petitioner what type of verification is acceptable for this type of expense. Therefore, the recoupment of a \$[REDACTED] overissuance of FAP benefits from Petitioner cannot be upheld at this time.

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:

- Redetermine Petitioner's eligibility for FAP for the time period of December 1, 2017 to November 30, 2018 in accordance with Department policy.

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 :

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Via-First Class Mail :

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