



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

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Date Mailed: May 29, 2024
MOAHR Docket No.: 24-004243
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 May 16, 2024, from Lansing, Michigan. ██████ ██████ the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Eugene Brown, Overpayment Establishment Agent (OEA).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-86.

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, 2022 to December 1, 2022 Petitioner received FAP benefits for a household of two.
2. On November ██████ 2021, Petitioner submitted a Redetermination for her FAP case indicating the household members were herself, her daughter, and an unrelated adult. It was reported that the unrelated adult purchased and prepared food separately. (Exhibit A, pp. 39-43)

3. On December █ 2021 an interview was completed with Petitioner. It was reported that Petitioner lives with her daughter and a friend. The friend purchases and prepares food separately. Everyone is in the home 30 days of the month. (Exhibit A, pp. 44-46)
4. On December █ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two, Petitioner and her daughter, effective January 1, 2022. The Notice indicated Petitioner was a simplified reporter and was only required to report lottery or gambling winnings over a specified amount and when 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. (Exhibit A, pp. 48-52)
5. On December █ 2021, a Simplified Six Month Review was issued to Petitioner explaining the simplified reporting process. A change in household members would need to be reported on the form for the six-month review. (Exhibit A, pp. 53-54)
6. On May █ 2022, Petitioner submitted a Renew Benefits listing herself and her daughter as household members. Petitioner also reported having surgery on her spine in April 2022. (Exhibit A, pp. 55-56)
7. On May █ 2022, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two, Petitioner and her daughter, effective July 1, 2022. The Notice indicated Petitioner was a simplified reporter and was only required to report lottery or gambling winnings over a specified amount and when 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. (Exhibit A, pp. 57-61)
8. On May █ 2022, a Simplified Six Month Review was issued to Petitioner explaining the simplified reporting process. A change in household members would need to be reported on the form for the six-month review. (Exhibit A, pp. 62-63)
9. On November █ 2022, Petitioner submitted a Renew Benefits listing herself as the only household member and removing her daughter. (Exhibit A, pp. 64-66)
10. On December █ 2022, an interview was completed with Petitioner. It was reported that Petitioner's daughter moved out in April 2022. (Exhibit A, pp. 67-73)
11. On December █ 2022, Petitioner's daughter was removed from Petitioner's FAP group. (Exhibit A, p. 47)
12. On December █ 2022, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one, just Petitioner, effective January 1, 2023. The Notice indicated Petitioner was a simplified reporter and was only required to report lottery or gambling winnings over a specified amount and when household gross monthly income exceeded \$1,473.00. A change in income over this amount was to be reported by the 10th day of the following month. (Exhibit A, pp. 74-78)

13. On December █ 2022, a Simplified Six Month Review was issued to Petitioner explaining the simplified reporting process. A change in household members would need to be reported on the form for the six-month review. (Exhibit A, pp. 79-80)
14. The Department determined that Petitioner was overissued FAP benefits from June 1, 2022 to December 31, 2022 in the amount of \$█ due to client error of not timely reporting when her daughter moved out on April 30, 2022. (Exhibit A, pp. 7, 14-15, and 19-33)
15. On March █ 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$█ overissuance of FAP benefits occurred from June 1, 2022 to December 31, 2022 due to client error and would be recouped. (Exhibit A, pp. 8-13)
16. On April 9, 2024, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 4-5)

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.

Department policy requires clients to completely and truthfully answer all questions on forms and in interview. BAM 105 (April 1, 2022) p. 9. Generally, clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes changes with household composition. BAM 105, pp. 11-13. However, the change reporting requirements are different for FAP simplified reporters. FAP simplified reporting households must report when the household monthly income exceeds the monthly gross income limit for its household size. 7 CFR 273.12(a)(5)(ii)(G)(1) Further, periodic reports are to be submitted on which it is requested that the household report any changes in circumstances. 7 CFR 273.12(a)(5)(iii). Similarly, Department policy regarding change reporting for FAP simplified reporting household indicates that simplified reporting groups are required to report only when the group's actual gross monthly income (not converted) exceeds the Simplified Reporting (SR) income limit for their group size. If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group's SR income limit, the group must

report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, April 1, 2022, p. 1. Simplified reporting households must also complete the Simplified Six Month Review form. Groups meeting the simplified reporting category at application and redetermination are assigned a 12-month benefit period and are required to have a semi-annual contact. BAM 200, pp. 2-3.

BEM 212 addresses FAP group composition and temporary absences:

Parents and their children under 22 years of age who live together must be in the same FAP group.

BEM 212, January 1, 2022, p. 1.

A person who is temporarily absent from the group is considered living with the group. A person's absence is temporary if all of the following are true:

- The person's location is known.
- The person lived with the group before an absence (newborns are considered to have lived with the group).
- There is a definite plan for return.
- The absence has lasted or is expected to last 30 days or less.

Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home.

BEM 212, January 1, 2022, p. 1
(Underline added by ALJ)

In this case, the Department determined that Petitioner was overissued FAP benefits from June 1, 2022 to December 31, 2022 in the amount of \$██████ due to client error of not timely reporting when her daughter moved out on April █████ 2022. (Exhibit A, pp. 7, 14-15, and 19-33). However, Petitioner was a simplified reporter. Accordingly, Petitioner was not required to report the change in household composition within 10 days. Petitioner was only required to report a change in household members on the form for the six-month review.

On May █████ 2022, Petitioner submitted a Renew Benefits listing herself and her daughter as household members. (Exhibit A, pp. 55-56). Accordingly, on May █████ 2022, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two, Petitioner and her daughter, effective July 1, 2022. (Exhibit A, pp. 57-61).

On November █████ 2022, Petitioner submitted a Renew Benefits listing herself as the only household member and removing her daughter. (Exhibit A, pp. 64-66). During the December █████ 2022 interview, Petitioner reported that Petitioner's daughter moved out in April 2022. (Exhibit A, pp. 67-73). Accordingly, Petitioner's daughter was not removed from Petitioner's FAP group until December █████ 2022. (Exhibit A, p. 47). On December

■ 2022, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one, just Petitioner, effective January 1, 2023. (Exhibit A, pp. 74-78).

On the hearing request, Petitioner stated her daughter traveled to see family on April ■ 2022, refused to return home on the planned date, but returned home at a later date. Petitioner asserted that she called her Department Specialist and reported that her daughter ran away, the Department Specialist advised her on how to fill out the forms and a determination was made with all the facts. (Exhibit A, p. 5).

Petitioner initially testified that her daughter ran away. Petitioner then stated her daughter was back and forth between Petitioner's home and Petitioner's sister's home. Petitioner later indicated that her daughter was going to go visit her sister for two to three months when Petitioner had her surgery in April 2022, but Petitioner's daughter then refused to get back on the plane to return. Petitioner indicated her daughter was gone for four months. Petitioner testified that she told the Department Specialist about this when it was occurring, and the Department Specialist told Petitioner not to change anything on the documents. This included speaking with the Department Specialist on May ■ 2022, when Petitioner told the Specialist her daughter ran away. Petitioner stated her daughter returned in November. (Petitioner Testimony).

Overall, the evidence indicates that Petitioner did not accurately report the household composition on the May ■ 2022 Renew Benefits. Petitioner testified that her daughter was going to visit Petitioner's sister when Petitioner had surgery in April 2022 and was expected to be gone for two to three months. (Petitioner Testimony). Accordingly, even before Petitioner's daughter refused to return, it was planned that Petitioner's daughter was going to be out of the home for over 30 days. This exceeds the time period for a temporary absence under the BEM 212 policy. Therefore, Petitioner should have reported that her daughter was not in the home when she completed the Renew Benefits on May ■ 2022.

However, the Department erred in determining the overpayment period by including June 2022. Petitioner was not required to report the change in household composition until she submitted the Renew Benefits form. Petitioner submitted the Renew Benefits on May ■ 2022. Allowing for time to the Department to process changes and provide advance notice, the effective date for the new eligibility determination would not have affected June 2022 FAP benefits. For example, the effective date from the May ■ 2022 Notice of Case Action was July 1, 2022. Therefore, June 2022 should not have been included in the overpayment 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 when it determined that Petitioner received the \$■■■■ overissuance of FAP benefits from June 1, 2022 to December 1, 2022 due to client error, because the month of June 2022 should not have been included in the overpayment period.

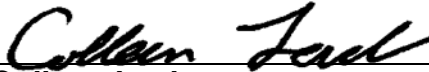
DECISION AND ORDER

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. Redetermine the FAP overpayment period and amount 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 :

DHHS
Tamara Jackson
Lapeer County DHHS
**MDHHS-Lapeer-
Hearings@michigan.gov**

DHHS Department Rep.
Overpayment Establishment Section
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BSC2HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

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