



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 11, 2022
MOAHR Docket No.: 22-000862
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 April 7, 2022, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Minnie Egbonu, Recoupment Specialist.

ISSUE

Did Petitioner receive an overissuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

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 Food Assistance Program (FAP) benefits during the period of March 1, 2021, through November 30, 2021 (Exhibit A, pp. 15-18).
2. On ██████████ 2021, Petitioner submitted an application for FAP benefits (Exhibit A, pp. 64-70).
3. On March 24, 2021, the Department sent Petitioner a Notice of Case Action (NOCA) informing her that she was entitled to FAP benefits (Exhibit A, pp. 53-58). The Department did not include an unearned income in the calculation of Petitioner's FAP benefit amount.
4. The Department had previous record that Petitioner was a recipient of Veteran Affairs (VA) benefits (Exhibit A, p. 46).

5. On February 8, 2022, the Department sent Petitioner a Notice of Overissuance informing her that she was overissued FAP benefits in the amount of \$[REDACTED] during the period of March 1, 2021, through November 30, 2021 (Exhibit A, pp. 8-13).
6. On [REDACTED] 2022, Petitioner submitted a request for hearing disputing the Department's actions.

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.

In this case, Petitioner completed an application for FAP benefits on [REDACTED] 2021. Petitioner also completed an interview on March 24, 2021, related to her application (Exhibit A, p. 61). Petitioner did not disclose, nor was she asked, if she was receiving VA benefits.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. VA pension payments are based on a combination of need, age, and/or nursing home status. BEM 503, p. 40. Pensions are normally paid monthly. BEM 503, p. 40. However, the VA may make the payment quarterly, twice a year or annually if the amount is small (less than \$19 per month). BEM 503, p. 40. Bridges counts the gross amount of the pension or compensation as unearned income. BEM 503, p. 40. Exceptions include payments resulting from Aid and Attendance or Housebound allowances; augmented benefits; and payments resulting from unusual medical expenses. BEM 503, pp. 40-41. VA provides educational benefits under several programs. BEM 503, p. 40. The Department excludes as income and as an asset. BEM 503, p. 40.

The Department testified that it had record that Petitioner was previously receiving a VA pension. On August 16, 2019, Petitioner submitted a letter from the Department of Veteran Affairs indicating that she began receiving a pension with a gross benefit amount of \$[REDACTED]9, with an effective date of December 1, 2018. The letter was dated August 9, 2019. Petitioner later submitted a letter from the Department of Veteran Affairs indicating that she began receiving a pension with a gross benefit amount of \$[REDACTED] with an effective date of July 1, 2021. The letter was dated November 15, 2021.

The Department testified that despite having the information that Petitioner had previously received a VA pension, Petitioner was not asked about the income at the time of her [REDACTED], 2021 application. The Department stated that the income was not properly budgeted as a result of agency error, as the Department had record of the income. As such, the Department testified that Petitioner's FAP benefit amount was improperly calculated, as the unearned income in the form of the VA pension benefits should have been included in Petitioner's FAP budget. The Department testified that Petitioner was overissued benefits for the period of March 1, 2021, through November 30, 2021, in the amount of [REDACTED] due to agency error.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. An agency error is caused by incorrect action by the Department staff or department processes. BAM 700, p. 4. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705 (January 2016), p. 6. If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source when determining the correct benefit amount. BAM 705, p. 8.

The Department presented a letter that was submitted by Petitioner on August 16, 2019, showing she was receiving a VA pension. The Department also provided the interview Guide showing Petitioner was not asked about the income that was previously budgeted at her interview on March 24, 2021. The Department presented Petitioner's Benefit Summary, which showed she was issued \$[REDACTED] in FAP benefits for the period of March 1, 2021, through November 30, 2021. The Department presented overissuance budgets for the period March 1, 2021, through November 30, 2021 (Exhibit A, pp. 22-39). The Department recalculated Petitioner's FAP benefits by adding in the VA pension income for each month as shown on Petitioner's reward letter (Exhibit A, p. 46). The budgets show that for the period of March 1, 2021, through November 30, 2021, Petitioner was not entitled to FAP benefits. Therefore, the Department determined Petitioner was overissued FAP benefits in the amount of \$[REDACTED].

At the hearing, Petitioner testified that at the time of the [REDACTED] 2021 FAP application, she was not receiving a VA pension. Petitioner testified that she was receiving disability benefits in 2018, as a result of a hospitalization. Petitioner stated that she ceased receiving those benefits when she enrolled in higher education and began receiving payments under the GI Bill. Petitioner stated that she was enrolled in school in the spring semester of 2020. Petitioner testified that she stopped her education and reapplied for pension benefits in September 2021. Petitioner reported that she did not receive any VA funded benefits between the spring semester of 2020 and when she reapplied for benefits in September 2021.

Petitioner submitted documentation showing all of the VA benefits she has received (Exhibit 1). The documentation supports Petitioner's testimony. Petitioner did not have any VA benefits at the time of application. Petitioner began receiving pension benefits as of September 1, 2021. The "10-10-12 Rule" is the unofficial name for the Department policies generally requiring at least 32 days between the date of a circumstance change

and the first month that an OI can be established when based on the circumstance change. BAM 105 (October 2016), p. 11, BAM 220, pp. 7 and 12. The rule is applicable to the present case. Application of the 10-10-12 rule would result in an OI period beginning October 1, 2021, as Petitioner was issued benefits on the 17th of each month (Exhibit A, pp. 15-17). Therefore, the Department failed to establish that Petitioner was overissued FAP benefits during the period of March 1, 2021, through September 30, 2021, in the amount of [REDACTED]. The Department established that during all months of the overissuance period that Petitioner was receiving VA benefits, she was not entitled to any FAP benefits. Thus, the Department established that Petitioner was overissued FAP benefits during the period of October 1, 2021, through November 30, 2021. Petitioner was issued FAP benefits in the amount of \$[REDACTED] in October and November 2021. Therefore, the Department established it is entitled to recoup \$[REDACTED] in overissued FAP benefits from Petitioner during the period of October 1, 2021, through November 30, 2021.

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 acted in accordance with Department policy when it determined Petitioner received an overissuance of FAP benefits in the amount of \$[REDACTED] during the period of October 1, 2021, through November 30, 2021. The Department failed to establish that it acted in accordance with policy when it determined Petitioner was overissued FAP benefits in the amount of \$[REDACTED] during the period of March 1, 2021, through September 30, 2021.

Accordingly, the Department's decision is **AFFIRMED**, in part, with respect to the overissuance during the period of October 1, 2021, through November 30, 2021, and **REVERSED**, in part, with respect to the overissuance during the period of March 1, 2021 through September 30, 2021.

The Department is **ORDERED** to initiate recoupment and/or collection procedures for the amount of \$[REDACTED] less any previously recouped/collected amounts, in accordance with Department policy.

IT IS FURTHER ORDERED that the Department delete the overissuance for the amount of \$[REDACTED] and cease all recoupment actions for that amount.

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Ellen McLemore
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 Email:

MDHHS-Wayne-31-Hearings
M. Holden
D. Sweeney
MDHHS-Recoupment-Hearings
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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