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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: March 17, 2023
MOAHR Docket No.: 22-004991
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 March 9, 2023, from Lansing, Michigan. ██████████ the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Latrisha Tartt, Recoupment Specialist.

During the hearing proceeding the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-68.

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 ██████████ 2017 to ██████████ 2017, Petitioner received FAP benefits in the amount of ██████████ per month. (Exhibit A, pp. 16-17 and 20-21)
2. On ██████████ 2013, Petitioner submitted an Assistance Application for FAP and other programs. (Exhibit A, pp. 35-59)
3. On ██████████ 2016, Petitioner submitted a Redetermination for FAP and other programs. (Exhibit A, pp. 60-65)
4. The Department verified Petitioner's daughter's Supplemental Security Income (SSI) income. (Exhibit A, pp. 27-32)

5. The Department determined that Petitioner was overissued FAP benefits from [REDACTED] 2017 to [REDACTED] 2017 due to a system error resulting in a lesser amount of SSI being entered in the FAP budget than what Petitioner's daughter actually received. (Exhibit A, pp. 1, 6-15, 20-21, 23-24, and 66)
6. On October 5, 2022, the Department sent Petitioner a Notice of Overissuance instructing her that a [REDACTED] overissuance of FAP benefits occurred from [REDACTED] 2017 to [REDACTED] 2017 due to agency error and would be recouped. (Exhibit A, pp. 3-5)
7. On October 14, 2022, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 67-68)

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, 2016, p. 9. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes any changes with assets. 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, January 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.

In this case, the Department determined that a FAP agency error overissuance occurred from March 1, 2017 to June 30, 2017 due to a system error resulting in a lesser amount of SSI being entered in the FAP budget than what Petitioner's daughter actually received. (Exhibit A, pp. 1, 6-15, 20-21, 23-24, and 66).

From [REDACTED] 2017 to [REDACTED] 2017, Petitioner received FAP benefits in the amount of [REDACTED] per month. (Exhibit A, pp. 16-17 and 20-21) The Department subsequently verified Petitioner's daughter's SSI income. (Exhibit A, pp. 27-32). The Department determined that Petitioner was overissued FAP benefits from [REDACTED] 2017 to [REDACTED] 2017 due to a system error resulting in a lesser amount of SSI being entered in the FAP budget than what Petitioner's daughter actually received. (Exhibit A, pp. 1, 6-15, 20-21, 23-24, and 66). On [REDACTED] 2022, the Department sent Petitioner a Notice of Overissuance instructing her that a [REDACTED] overissuance of FAP benefits occurred from [REDACTED] 2017 to [REDACTED] 2017 due to agency error and would be recouped. (Exhibit A, pp. 3-5).

Petitioner noted that this was an agency error. Petitioner indicated she was not made aware that if the Department made a mistake she would be responsible for repaying the error. (Petitioner Testimony). However, by electronically signing the assistance application, Respondent certified that she had received, reviewed, and agreed with the section in the assistance application Information Booklet explaining how to apply for and receive help: Things You Must Do; Important Things to Know; and Information About Your Household That Will Be Shared. Petitioner also certified that she had read and understood the Rights and Responsibilities. (Exhibit A, p. 58). This included: repaying extra benefits even if there was no fraud; and if the Department made an error, the adults in the household must repay the extra benefits except for medical assistance benefits. (Exhibit A, p. 59).

Petitioner also noted how long ago the error occurred and questioned whether the Department could pursue recoupment for an error that occurred in 2017. (Petitioner Testimony) Pursuant to Federal Regulations, a state agency cannot include amounts that occurred more than six years before the state agency became aware of the overpayment. 7 CFR § 273.18(c)(1)(i). The overissuance of FAP benefits occurred from March 1, 2017 to June 30, 2017. The Overissuance Referral was made October 2, 2017. (Exhibit A, p. 56). Accordingly, when the October 5, 2022, Notice of Overissuance was sent to Petitioner, it had not been more than six years from when the Department became aware of the overpayment.

The above cited BAM 700 policy requires the Department to recoup the overissuance when a client group receives more benefits than it is entitled to receive. This includes overissuances caused by agency errors when the amount is at least \$250 per program.


Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits from March 1, 2017 to June 30, 2017 due to a system error resulting in a lesser amount of SSI being entered in the FAP budget than what Petitioner's daughter actually received. (Exhibit A, pp. 1, 6-15, 20-21, 23-24, and 66). The Department properly sought recoupment of a \$660.00 overissuance of FAP benefits from Petitioner.

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 the \$660.00 overissuance of FAP benefits from March 1, 2017 to June 30, 2017 due to agency error, which must be recouped.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

CL/ml



Colleen Lack
Administrative Law Judge

