



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], NY [REDACTED]

Date Mailed: March 21, 2023
MOAHR Docket No.: 23-000749
Agency No.: [REDACTED]
Petitioner: [REDACTED] [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 March 15, 2023, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Recoupment Specialist Julie Luczak. Department Exhibit 1, pp. 1-64 was received and admitted.

ISSUE

Did the Department properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits due to client 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. On [REDACTED] [REDACTED] 2021, Petitioner applied for FAP. Petitioner stated on her application "Employment with SCA (Student Conservation Program) is an Americorps program with a duration of 4 ½ months whose main state is Texas, but work occurs throughout various states in the Midwest and Texas."
2. Petitioner began using her FAP benefits in Alaska on April 29, 2022. Prior to that Petitioner was using her FAP benefits in Michigan, Missouri, and Illinois.
3. Petitioner did not sign a lease in Alaska, she did not get a driver's license or register to vote in Alaska. Petitioner continued to receive mail in Michigan.
4. Petitioner credibly testified at hearing that she did not intend to reside in Alaska and that she intended to continue to reside in Michigan.

5. On September 13, 2022, Petitioner submitted redetermination paperwork and stated that her employment in Alaska would end on October 20. (Ex. 1, p. 51)
6. On January 23, 2023, Notice of Overissuance was sent to Petitioner alleging that she received an overissuance of FAP benefits totaling \$1,756 for the time period from June 1, 2022, through October 31, 2022.
7. On February 2, 2023, 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.

RESIDENCE

CDC and FAP

A person is considered a resident while living in Michigan for any purpose **other than a vacation**, even if there is no intent to remain in the state permanently or indefinitely. Eligible persons may include:

Persons who entered the state with a job commitment or to seek employment; and

Students (for FAP **only**, this includes students living at home during a school break.) BEM 220

Temporary Absence

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

In this case, Petitioner applied and was awarded FAP benefits in November 2021 and clearly stated to the Department that she was working for a service program that would require that she be in different states for a period of months. Petitioner's Michigan residency was not questioned at that time. Petitioner used her FAP benefits in at least 3 different states during this time period. Petitioner began working at another service program in Alaska in April 2022 and used her FAP benefits in Alaska. On September 13, 2022, Petitioner submitted redetermination paperwork telling the Department that she would be stopping working in Alaska on October 20, 2022. Petitioner did not sign a lease in Alaska, she did not get a driver's license or register to vote in Alaska. Petitioner credibly testified at hearing that she did not intend to reside in Alaska and that she intended to continue to reside in Michigan.

On January 23, 2023, Notice of Overissuance was sent to Petitioner alleging that she received an overissuance of FAP benefits totaling \$1,756 for the time period from June 1, 2022, through October 31, 2022. The Department alleged that Petitioner ceased being a resident of Michigan when she was working in Alaska and using her FAP benefits exclusively in Alaska. The Department argued that since she was living in Alaska for a purpose other than a vacation and she was absent for more than 30 days, she should no longer be considered a Michigan resident and cited BEM 220 and 212 in support of that contention. The policy cited by the Department is inclusive, instructing when to include individuals as residents. The policy cited does not state that if someone is living in another state for a purpose other than a vacation or is absent for more than 30 days, they are excluded from being a resident.

Petitioner was forthright and honest about her work circumstances and where that work took place at the time of application and at redetermination. Petitioner was a resident of Michigan and she intended to remain a Michigan resident as evidenced by her maintaining her Michigan driver's license and voter registration and continuing to receive mail in Michigan. The undersigned Administrative Law Judge finds that Petitioner maintained her Michigan residency during the time period in question.

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 an overissuance of FAP benefits.

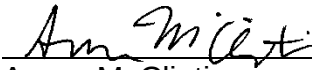
DECISION AND ORDER

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. Delete the finding of overissuance.
2. Cease all collections measures for the now deleted overissuance.

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

Kelly Sutherland
Livingston County DHS
2300 E Grand River Ste. 1
Howell, MI 48843
**MDHHS-Livingston-
Hearings@michigan.gov**

Interested Parties

Livingston County DHHS
MDHHS Recoupment
N. Stebbins
MOAHR

DHHS Department Rep.

Overpayment Research and
Verification (ORV)
235 S Grand Ave
Lansing, MI 48909
**MDHHS-RECOUPMENT-
HEARINGS@Michigan.gov**

Via-First Class Mail :

Petitioner

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