



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 27, 2023
MOAHR Docket No.: 23-004923
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

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 October 17, 2023, from Lansing, Michigan. [REDACTED] [REDACTED] the Petitioner, appeared on her own behalf. [REDACTED] [REDACTED] Case Manager Gratiot Integrated Health Network, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Catrice Legacy, Overpayment Establishment Analyst.

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 December 1, 2020 to June 30, 2021, Petitioner received FAP benefits totaling \$[REDACTED] subject to recoupment. (Exhibit A, pp. 51-55)
2. On August [REDACTED] 2020, Petitioner submitted an Assistance Application for FAP for herself. It was reported that Petitioner resided at [REDACTED]. (Exhibit A, pp. 7-11)

3. On August █ 2020, an interview was completed with Petitioner. It was reported that Petitioner is disabled and resides in an adult foster care (AFC) home, █ AFC. (Exhibit A, pp. 12-14)
4. On August █ 2020, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one as of August █ 2020. The Notice included a budget summary showing the housing cost included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. A blank Change Report form was included. (Exhibit A, pp. 15-22)
5. On August █ 2020, the Department received verification that Petitioner resided at █ AFC home located at █, MI and her cost of care. (Exhibit A, pp. 23-28)
6. On August █ 2020, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one as of September █ 2020. The Notice included a budget summary showing the housing cost included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. (Exhibit A, pp. 29-33)
7. On June █ 2021, the Department learned that Petitioner had been living in a different AFC home since October █ 2020 and noted that the updated living arrangement and change of address had not been reported. (Exhibit A, p. 45)
8. The Department verified that █ was not a non-profit AFC home. (Exhibit A, pp. 34-38)
9. On June █ 2021, a Notice of Case Action was issued closing Petitioner's FAP case because she was not eligible due to institutional status. (Exhibit A, pp. 39-42)
10. The Department determined that Petitioner was overissued FAP benefits from December 1, 2020 to June 30, 2021 in the amount of \$█ due to client error of not reporting her move to a for-profit AFC home. (Exhibit A, pp. 48-51)
11. On July █ 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$█ overissuance of FAP benefits occurred from December 1, 2020 to June 30, 2021 due to client error and would be recouped. (Exhibit A, pp. 63-68)
12. On August 7, 2023, 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.

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, July 1, 2020, p. 9. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes changes with address and shelter costs. BAM 105, pp. 11-13.

Pursuant to BEM 615, residents of certain group living facilities can qualify for FAP. In order to be eligible for FAP as an AFC home resident, the home must be nonprofit and licensed for 16 or fewer residents. Nonprofit means IRS tax exempt. BEM 615, April 1, 2017, pp. 1-2.

BEM 617 also addresses FAP in nonprofit group living facilities. A resident in an eligible AFC home must be disabled or a veteran. The Department must verify that the AFC home is an eligible facility. The Department must also determine what portion of the client's payment is for shelter and what portion is for medical care. The AFC home operator must provide a statement showing the amount the client pays toward care, the medical services provided, and the amount of the client's payment that represents shelter costs. BEM 617, July 1, 2016, pp. 1-2.

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, April 1, 2022, p. 7. A pending 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 client error overissuance occurred from December 1, 2020 to June 30, 2021 in the amount of \$[REDACTED] due to client error of not reporting her move to a for-profit AFC home. (Exhibit A, pp. 48-51).

When Petitioner applied for FAP in August 2020, it was reported that Petitioner is disabled and resides in an adult foster care (AFC) home, [REDACTED] AFC. (Exhibit A, pp. 7-14). The Department verified eligibility for Petitioner to receive FAP as a resident of this AFC home. (Exhibit A, pp. 23-28).

On June [REDACTED] 2021, the Department learned that Petitioner had been living in a different AFC home since October [REDACTED] 2020 and noted that the updated living arrangement and change of address had not been reported. (Exhibit A, p. 45). The Department verified that the new AFC home, [REDACTED] was not a non-profit AFC home. (Exhibit A, pp. 34-38). The Department determined that Petitioner was overissued FAP benefits from December 1, 2020 to June 30, 2021 in the amount of \$[REDACTED] due to client error of not reporting her move to a for-profit AFC home. (Exhibit A, pp. 48-51). Accordingly, on July [REDACTED] 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$[REDACTED] overissuance of FAP benefits occurred from December 1, 2020 to June 30, 2021 due to client error and would be recouped. (Exhibit A, pp. 63-68).

Petitioner testified that she was not aware that there were different types of AFC homes or that it could affect her eligibility for FAP. (Petitioner Testimony).

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 client or agency errors when the amount is at least \$250 per program.

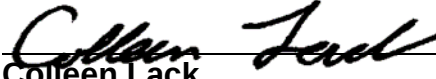
Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits from December 1, 2020 to June 30, 2021 in the amount of \$[REDACTED] due to client error of not reporting her move to a different AFC home. Therefore, the Department properly sought recoupment of a \$[REDACTED] 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 \$[REDACTED] overissuance of FAP benefits from December 1, 2020 to June 30, 2021 due to client error, which must be recouped.

DECISION AND ORDER

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

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
Garilee Janofski
Gratiot County DHHS
MDHHS-Gratiot-
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DHHS Department Rep.
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BSC2HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]