



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: December 11, 2023
MOAHR Docket No.: 23-007382
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 November 30, 2023, from Lansing, Michigan. [REDACTED] [REDACTED] Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Sharion Hopson, Overpayment Analyst (OA).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-85.

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 August 1, 2019 to October 31, 2019 and March 1, 2020 to March 31, 2020 Petitioner received FAP benefits totaling \$1,140.00. (Exhibit A, p. 13)
2. From February 1, 2020 to February 29, 2020 Petitioner received FAP benefits totaling \$[REDACTED] (Exhibit A, p. 13)
3. On May [REDACTED] 2019, Petitioner submitted an Assistance Application for FAP and other benefit programs for her household, which included [REDACTED] [REDACTED] (LS). It was reported that the only household income was from LS's employment with

██████████, averaging 40 hours per week at \$██████ per hour. (Exhibit A, pp. 76-84)

4. On May █████ 2019, a Notice of Case Action was issued to Petitioner approving FAP for a household size of five, including LS. A budget summary was included showing earned income of \$██████ and no unearned income was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes. Specifically, Respondent was a simplified reporter and was only required to report when the household gross monthly income exceeded \$3,188.00. A change in income over this amount was to be reported by the 10th day of the following month. A Simplified Six Month Review was included. (Exhibit A, pp. 70-75)
5. On September █████ 2019, Petitioner submitted a Renew Benefits reporting unchanged income from LS's employment with ████████ (Exhibit A, pp. 68-69)
6. On October █████ 2019, a Notice of Case Action was issued to Petitioner approving FAP for a household size of five, including LS. A budget summary was included showing earned income of \$██████ and no unearned income was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes. (Exhibit A, pp. 63-67)
7. On January █████ 2020, Petitioner reported that LS started employment with ████████ January █████ 2020 and his first pay date was January █████ 2020. It was reported that LS works an average of 40 hours per week and earning \$██████ per hour. (Exhibit A, pp. 61-62)
8. On January █████ 2020, Petitioner reported that she had a new job with ████████ (Exhibit A, p. 4)
9. On March █████ 2020, a Notice of Case Action was issued to Petitioner closing the FAP case effective April 1, 2020. (Exhibit A, pp. 55-59)
10. The Department verified unemployment benefit income for Petitioner with pay dates from June 15, 2019 to October 19, 2019. (Exhibit A, pp. 52-54)
11. An Earnings Request documented Petitioner's earnings from employment with ████████ that started December 2, 2019 and ended May 21, 2021. (Exhibit A, pp. 47-51)
12. A report from The Work Number verified LS's last day of employment with ████████ was December █████ 2019. (Exhibit A, pp. 45-46)
13. A wage match documented that LS had earnings the first quarter of 2020 from ████████ in the amount of \$██████ (Exhibit A, pp. 42-44)
14. The Department requested verification of LS's earnings from employment with ████████ (Exhibit A, pp. 40-41)

15. The Department determined that Petitioner was overissued FAP benefits from August 1, 2019 to October 31, 2019 and March 1, 2020 to March 31, 2020 in the amount of \$[REDACTED] due to agency error of not timely budgeting Petitioner's 2019 unemployment benefit income and LS's 2020 [REDACTED] [REDACTED] income. (Exhibit A, pp. 27-35)
16. On September [REDACTED] 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$[REDACTED] overissuance of FAP benefits occurred from August 1, 2019 to October 31, 2019 and March 1, 2020 to March 31, 2020 due to agency error and would be recouped. (Exhibit A, pp. 14-19)
17. The Department determined that Petitioner was overissued FAP benefits from February 1, 2020 to February 29, 2020 in the amount of \$[REDACTED] due to client error of not properly reporting her 2020 [REDACTED] [REDACTED] income. (Exhibit A, pp. 36-38)
18. On September [REDACTED] 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$[REDACTED] overissuance of FAP benefits occurred from February 1, 2020 to February 29, 2020 due to client error and would be recouped. (Exhibit A, pp. 20-25)
19. On or about October 17, 2023, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, p. 8)

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, January 1, 2019, p. 9. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes changes with income. 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, April 1, 2019, 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.

The Department determined that Petitioner was overissued FAP benefits from August 1, 2019 to October 31, 2019 and March 1, 2020 to March 31, 2020 in the amount of \$[REDACTED] due to client and agency errors. There was the client error of not reporting on the October 2019 semi annual review that the household income had changed by more than \$100.00 when Petitioner was receiving unemployment benefits. However, it was discovered that the interface that allows for the data exchange with unemployment did not properly create an unearned income record for Petitioner. The agency error takes precedence over the client error. Further, Petitioner reported LS's income from employment with [REDACTED] [REDACTED] on January [REDACTED] 2020, but the Department failed to include that income in the March 2020 budget. Therefore, the Department determined the overissuance was due to agency error of not timely budgeting Petitioner's 2019 unemployment benefit income and LS's 2020 [REDACTED] [REDACTED] income. (Exhibit A, pp. 4, and 27-35). Accordingly, on September [REDACTED] 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$[REDACTED] overissuance of FAP benefits occurred from August 1, 2019 to October 31, 2019 and March 1, 2020 to March 31, 2020 due to agency error and would be recouped. (Exhibit A, pp. 14-19).

The Department determined that Petitioner was overissued FAP benefits from February 1, 2020 to February 29, 2020 in the amount of \$[REDACTED] due to client error of not properly reporting her 2020 [REDACTED] [REDACTED] income. Petitioner submitted a change report on January [REDACTED] 2020 reporting her new job at [REDACTED] [REDACTED] however her first pay was December [REDACTED] 2019. The income from this employment was not timely reported, resulting in a client error overissuance for February 2020. (Exhibit A, pp. 4 and 36-38). Accordingly, on September 6, 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$[REDACTED] overissuance of FAP benefits occurred from February 1, 2020 to February 29, 2020 due to client error and would be recouped. (Exhibit A, pp. 20-25).

Petitioner questioned that shelter expenses included in the FAP budgets. Petitioner indicated that at one point she had both the mortgage and a home equity loan but did not recall the timeline. (Petitioner Testimony). The OA confirmed that the mortgage insurance, and tax expenses included in the FAP budgets came from the verification that

was submitted for the shelter expenses at that time. (OA Testimony). Petitioner questioned whether the FAP benefits were actually used. (Petitioner Testimony). The OA reviewed the case and confirmed that there were no unused FAP benefits. (OA Testimony). Petitioner also had questions regarding how to request a reduction of the debt due to extreme hardship in accordance with the information stated in the delinquency portion of the Repayment Agreement Form. (Petitioner Testimony). However, this Administrative Law Judge has no jurisdiction regarding such requests.

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.

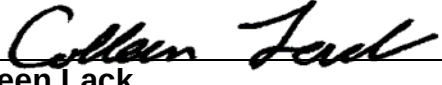
Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits from August 1, 2019 to October 31, 2019 and March 1, 2020 to March 31, 2020 in the amount of \$[REDACTED] due to agency error and from February 1, 2020 to February 29, 2020 in the amount of \$[REDACTED] due to client error. Therefore, the Department properly sought recoupment of a \$[REDACTED] overissuance and 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 August 1, 2019 to October 31, 2019 and March 1, 2020 to March 31, 2020 due to agency error, and the \$[REDACTED] overissuance of FAP benefits from February 1, 2020 to February 29, 2020 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
Kim Cates
Bay County DHHS
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MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]