



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: January 16, 2024
MOAHR Docket No.: 23-008240
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 January 3, 2024, from Lansing, Michigan. [REDACTED] [REDACTED] Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Kathleen Zewatsky, Overpayment Establishment Analyst (OEA).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-54.

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 January 1, 2022 to May 31, 2022 Petitioner received FAP benefits totaling \$[REDACTED] (Exhibit A, pp. 14-15)
2. On August [REDACTED] 2020, Petitioner submitted a Renew Benefits. (Exhibit A, pp. 44-46)
3. On September [REDACTED] 2020, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded

Respondent of the responsibility to report changes within 10 days. A blank Change Report form was included. (Exhibit A, pp. 32-39)

4. On August █ 2021, Petitioner submitted a Renew Benefits. (Exhibit A, pp. 47-48)
5. On August █ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes within 10 days. (Exhibit A, pp. 27-31)
6. On November █ 2021, Petitioner submitted a change report regarding the start of income from employment with █ (Exhibit A, pp. 51-52)
7. On February █ 2022, Petitioner submitted a change report regarding the end of income from Social Security benefits due to work income. (Exhibit A, pp. 49-50)
8. The Department has since verified income for Petitioner from employment with █ with a first pay date of November 15, 2021. (Exhibit A, pp. 40-43)
9. The Department determined that Petitioner was overissued FAP benefits from January 1, 2022 to May 31, 2022 in the amount of \$█ due to agency error of failing to act on income Petitioner reported timely. (Exhibit A, pp. 16-26)
10. On October █ 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$█ overissuance of FAP benefits occurred from January 1, 2022 to May 31, 2022 due to agency error and would be recouped. (Exhibit A, pp. 7-12)
11. On November 27, 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, April 1, 2022, 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 January 1, 2022 to May 31, 2022 in the amount of \$[REDACTED] due to agency error of failing to act on income Petitioner reported timely. (Exhibit A, pp. 16-26). Accordingly, on October 3, 2023, the Department sent Petitioner a Notice of Overissuance instructing her that a \$[REDACTED] overissuance of FAP benefits occurred from January 1, 2022 to May 31, 2022 due to agency error and would be recouped. (Exhibit A, pp. 7-12).

On November [REDACTED] 2021, Petitioner submitted a change report regarding the start of income from employment with [REDACTED] [REDACTED] (Exhibit A, pp. 51-52). The Department has since verified income for Petitioner from employment with [REDACTED] [REDACTED] with a first pay date of November 15, 2021. (Exhibit A, pp. 40-43). However, the Department failed to act when Petitioner reported this employment income.

Petitioner asserted that she had not used hardly any of the FAP benefits on her EBT card. (Petitioner Testimony). The OEA confirmed that there were no unused benefits remaining on the EBT card that were expunged. Unused benefits would have been expunged after a year. If any FAP benefits had been expunged, this would have been indicated on the benefit issuance summary. (Exhibit A, pp. 14-15; OEA Testimony). Petitioner stated she stopped using the benefits in January or February when she knew that she had a full-time job. Petitioner was hospitalized in March 2022 and her wallet was stolen. However, Petitioner did not report her EBT card as stolen. Petitioner thought the FAP case would be closed anyways. Petitioner is frustrated that she did what she was supposed to by

reporting the income when it started, and she is now being asked to repay this a year and a half later due to the Department's mistake. (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 January 1, 2022 to May 31, 2022 in the amount of \$[REDACTED] due to agency error. The benefits issuance history shows that the FAP benefits were issued to Petitioner and that there were no unused benefits expunged. This indicates that the FAP benefits were utilized. Petitioner acknowledged that she did not report her EBT card as stolen. 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 January 1, 2022 to May 31, 2022 due to agency 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
Heather Dennis
Jackson County DHHS
MDHHS-Jackson-
Hearings@michigan.gov
DHHS Department Rep.
Overpayment Establishment Section
(OES)
MDHHS-RECOUPMENT-
HEARINGS@Michigan.gov

HoldenM

DensonSogbakaN

BSC4HearingDecisions

Via-First Class Mail :

MOAHR
Petitioner

[REDACTED]
[REDACTED]
[REDACTED]