



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

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Date Mailed: January 12, 2024
MOAHR Docket No.: 23-008557
Agency No.: ██████████
Petitioner: ██████ ██████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on January 3, 2024, from Lansing, Michigan. Petitioner represented himself. The Department was represented by Eugene Brown.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits that the Department is required to recoup?

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 July █████ 2022, the Department received Petitioner’s application for Food Assistance Program (FAP) benefits as a household of one with others living in the home that do not purchase and prepare food with Petitioner. Exhibit A, p 73.
2. On May █████ 2023, the Department received Petitioner’s Redetermination form where she reported that to be living with a fiancé and their child. Exhibit A, p 99.
3. Petitioner’s fiancé received earned income from employment from October 7, 2022, through June 30, 2023. Exhibit A, pp 37-71.
4. Petitioner received Food Assistance Program (FAP) benefits totaling \$██████ from December 1, 2022, through June 30, 2023. Exhibit A, pp 17-18.
5. On November 17, 2023, the Department sent Petitioner a Notice of Overissuance instructing her that she had received a \$██████ overissuance of Food Assistance

Program (FAP) benefits during the period of December 1, 2022, through June 30, 2023. Exhibit A, p 8.

6. On December 1, 2023, the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program (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) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq*, and Mich Admin Code, R 400.3001 through 400.3011.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (October 1, 2023), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (November 1, 2023), 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.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person resides in an eligible living situation. Parents and their children must be in the same FAP benefits group. Spouses must also be in the same benefit group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2022), p 1.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1. A recipient claim is an amount owed because of benefits that are overpaid and the Department must establish and collect any claim. 7 CFR 273.18(a).

On July [REDACTED] 2022, the Department received Petitioner's application for FAP benefits as a household of one while also reporting the presence of other people in the home that were not required to be included in the FAP benefits eligibility group. Later, the Department received reliable information that Petitioner was living with her fiancé and their child. Petitioner was under no duty to include her fiancé in her FAP benefits group if they do not purchase and prepare food together, but parents and their children are required to be in the same FAP benefits group. Petitioner was required to include her child in her FAP benefits group, and the father was required to be in the same group as Petitioner's child.

Since Petitioner's fiancé was not included in Petitioner's FAP benefit group, the Department did not consider any income received by the fiancé. If Respondent had reported the fiancé's income in a timely manner, the Department would have closed Petitioner's eligibility for FAP benefits by the first benefit period after November 8, 2022. Petitioner received FAP benefits totaling \$[REDACTED] that she would not have been eligible for if her fiancé had been included in the FAP benefits group. Therefore, Petitioner received a \$[REDACTED] overissuance of FAP benefits.

Initially, the Department determined that Petitioner has failed to report household income, but later it was determined that there was information available to the Department concerning the fiancé and their child that was not acted on in a timely manner.

Since the overissuance was caused by the Department's failure to act on information that was available to it and not a failure to report income, Petitioner was entitled to the same 20% earned income deduction that would have been available to her if the Department had originally considered this household income.

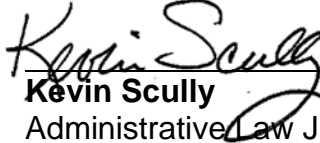
However, during the period of alleged overissuance, Petitioner was living with a relative and had no housing expenses, which was not disputed by Petitioner during the hearing. The hearing record supports a finding that the 20% earned income deduction would not have allowed Petitioner to remain eligible for any FAP benefits, and the Department's determination of the amount of the FAP benefits issued in error would have remained the same. The fact that it was the Department's failure to act that caused the overissuance does not excuse Petitioner from the obligation to repay the Department to repay these benefits where there was no eligibility to receive them.

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 a \$[REDACTED] overissuance of Food Assistance Program (FAP) benefits due to Department error.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/dm


Kevin Scully

Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

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
Tamara Jackson
Lapeer County DHHS
**MDHHS-Lapeer-
Hearings@michigan.gov**

DHHS Department Rep.
Overpayment Establishment Section
(OES)
**MDHHS-RECOUPMENT-
HEARINGS@Michigan.gov**

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MOAHR

Via-First Class Mail :

Petitioner

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