



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 8, 2024
MOAHR Docket No.: 24-005462
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 June 27, 2024, from Lansing, Michigan. [REDACTED] [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Mary Peterson (Overpayment Establishment Analyst (OEA)).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-53.

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 November 1, 2023 to February 29, 2024 Petitioner received FAP benefits totaling \$ [REDACTED] (Exhibit A, pp. 14-15)
2. On August [REDACTED] 2023, Petitioner applied for FAP for herself and her son. Petitioner reported her employment with [REDACTED] [REDACTED] had ended. (Exhibit A, pp. 41-47)
3. Petitioner started employment with [REDACTED] on September [REDACTED] 2023 and her first pay was September 29, 2023. (Exhibit A, p. 51)

4. On September ■ 2023, an interview was completed with Petitioner during which Petitioner reported new employment with ■ (Exhibit A, p. 51)
5. On September ■ 2023, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing no earned income was included in the FAP budget. The Notice indicated Petitioner was a simplified reporter and was only required to report lottery or gambling winnings over a specified amount and when household gross monthly income exceeded \$2,137.00. A change in income over this amount was to be reported by the 10th day of the following month. (Exhibit A, pp. 29-34)
6. On September ■ 2023, a Simplified Six Month Review was issued to Petitioner explaining the simplified reporting process. (Exhibit A, pp. 35-36)
7. Petitioner's income began exceeding the simplified reporting limit in September 2023. (Exhibit A, p. 51)
8. On February ■ 2024, a Notice of FAP Closure was issued to Petitioner stating the FAP case would close effective February 29, 2024 based on a failure to return the semi-annual contact form. (Exhibit A, pp. 37-40)
9. On February ■ 2024, Petitioner submitted a Semi-Annual Contact Report indicating household income of \$■ (Exhibit A, pp. 48-50)
10. The Department verified Petitioner's wages during the overpayment period with a report from The Work Number. (Exhibit A, pp. 25-28)
11. The Department determined that Petitioner was overissued FAP benefits from November 1, 2023 to February 29, 2024 in the amount of \$■ due to agency error of failing to act on income Petitioner reported timely. (Exhibit A, pp. 16-24)
12. On April ■ 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$■ overissuance of FAP benefits occurred from November 1, 2023 to February 29, 2024 due to agency error and would be recouped. (Exhibit A, pp. 8-13)
13. On May 9, 2024, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 3-5)

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.

Department policy requires clients to completely and truthfully answer all questions on forms and in interview. BAM 105 (July 1, 2023) p. 9. Generally, clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. BAM 105, pp. 11-13. However, the change reporting requirements are different for FAP simplified reporters. FAP simplified reporting households must report when the household monthly income exceeds the monthly gross income limit for its household size. 7 CFR 273.12(a)(5)(ii)(G)(1) Further, periodic reports are to be submitted on which it is requested that the household report any changes in circumstances. 7 CFR 273.12(a)(5)(iii). Similarly, Department policy regarding change reporting for FAP simplified reporting household indicates that simplified reporting groups are required to report only when the group's actual gross monthly income (not converted) exceeds the Simplified Reporting (SR) income limit for their group size. If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. BAM 200, July 1, 2023, p. 1. Simplified reporting households must also complete the Simplified Six Month Review form. Groups meeting the simplified reporting category at application and redetermination are assigned a 12-month benefit period and are required to have a semi-annual contact. BAM 200, pp. 2-3.

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, July 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. 13.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overpayment. BAM 700, June 1, 2024, p. 1. An agency error is a type of overpayment or underissuance resulting from an incorrect action or failure to take action by the state agency. A client error is a type of overpayment or underissuance resulting from inaccurate reporting on the part of the household. BAM 700, p. 5. Agency and client errors are not pursued if the OP amount is equal to or less than \$250 per program. BAM 700 p. 5.

The Department determined that Petitioner was overissued FAP benefits from November 1, 2023 to February 29, 2024 in the amount of \$[REDACTED] due to agency error of failing to act on income Petitioner reported timely. (Exhibit A, pp. 16-24). Accordingly, on April [REDACTED] 2024, the Department sent Petitioner a Notice of Overissuance

instructing her that a \$[REDACTED] overissuance of FAP benefits occurred from November 1, 2023 to February 29, 2024 due to agency error and would be recouped. (Exhibit A, pp. 8-13).

It was uncontested that Petitioner timely reported her employment during the application process. On August [REDACTED] 2023, Petitioner applied for FAP for herself and her son. Petitioner reported her employment with [REDACTED] [REDACTED] had ended. (Exhibit A, pp. 41-47). Petitioner started employment with [REDACTED] on September [REDACTED] 2023 and her first pay was September 29, 2023. (Exhibit A, p. 51). On September [REDACTED] 2023, an interview was completed with Petitioner during which Petitioner reported new employment with [REDACTED] (Exhibit A, p. 51). However, the Department failed to timely act when Petitioner reported this employment income. The Department has since verified Petitioner's wages during the overpayment period with a report from The Work Number. (Exhibit A, pp. 25-28).

Petitioner noted that this was not her fault and indicated that she cannot afford to pay back the FAP benefits. Petitioner indicated she reported the employment multiple times, which is not shown in the Department's exhibits. Petitioner went above and beyond to properly report the employment income. (Petitioner Testimony). As indicated above, it is uncontested that Petitioner timely reported the employment income during the application process.

The above cited BAM 700 policy requires the Department to recoup the overpayment when a client group receives more benefits than it is entitled to receive. This includes overpayments caused by agency error when the amount is at least \$250 per program.

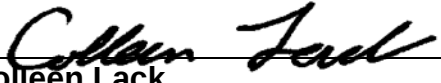
Overall, the evidence supports the Department's determination that Petitioner received an overpayment of FAP benefits from November 1, 2023 to February 29, 2024 in the amount of \$[REDACTED] due to agency error. Therefore, the Department properly sought recoupment of a \$[REDACTED] overpayment of FAP 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] overpayment of FAP benefits from November 1, 2023 to February 29, 2024 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
Elisa Daly
Saginaw County DHHS
MDHHS-Saginaw-
Hearings@michigan.gov

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

HoldenM

DensonSogbakaN

BSC2HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]