



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

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Date Mailed: August 5, 2024
MOAHR Docket No.: 24-006729
Agency No.: ██████████
Petitioner: ██████ ██████

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 July 23, 2024, from Lansing, Michigan. ██████ ██████ the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Anna Peterson, Overpayment Establishment Analyst (OEA).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-55.

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 February 1, 2022 to June 30, 2022 Petitioner received FAP benefits subject to recoupment totaling \$██████████ (Exhibit A, pp. 14-16)
2. On November ██████ 2021, Petitioner applied for FAP for herself. Petitioner reported that she has been unable to find a job and her unemployment benefits were expected to end the second week of December. Petitioner also reported recent and upcoming job interviews. (Exhibit A, pp. 46-51)

3. On November █ 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. A blank Change Report form was included. (Exhibit A, pp. 33-40)
4. On June █ 2022, a Notice of Case Action was issued to Petitioner closing the FAP case effective August 1, 2022 based on income in excess of program limits. (Exhibit A, pp. 41-45)
5. The Department verified Petitioner's wages during the overpayment period with a quarterly wage history. (Exhibit A, pp. 31-32)
6. On April █ 2024, the Department sent an Earnings Request to █ █ requesting verification of Petitioner's income from employment. (Exhibit A, pp. 28-30)
7. On May █ 2014, the Earnings Request was received back uncompleted and noted return to sender. (Exhibit A, p. 28)
8. The Department determined that Petitioner was overissued FAP benefits from February 1, 2022 to June 30, 2022 in the amount of \$█ due to client error of not reporting income from employment during the first quarter of 2022. (Exhibit A, pp. 17-27)
9. On May █ 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$█ overissuance of FAP benefits occurred from February 1, 2022 to June 30, 2022 due to client error and would be recouped. (Exhibit A, pp. 8-13)
10. On June 3, 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.

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, October 1, 2021, 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, August 1, 2021, 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.

On May █ 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$█ overissuance of FAP benefits occurred from February 1, 2022 to June 30, 2022 due to client error and would be recouped. (Exhibit A, pp. 8-13). Accordingly, May █ 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$█ overissuance of FAP benefits occurred from February 1, 2022 to June 30, 2022 due to client error and would be recouped. (Exhibit A, pp. 8-13).

Petitioner asserted that she was in close contact with her caseworker Brenda Prentice, who was aware that Petitioner was interviewing for jobs. caseworker Brenda Prentice advised Petitioner to let the Department know if she got the job within 10 days. On January █ 2022 Petitioner called and let caseworker Brenda Prentice know when she got the job and to cancel the benefits. Petitioner tried to get a call log, but the phone company records only let her go back six months. Petitioner has not heard from caseworker Brenda Prentice since. Six months later, Petitioner got a notice, so she called the Department and spoke with someone else. Petitioner noted that she never used the funds on the electronic benefit transfer (EBT) card. Petitioner is an honest person, she did not use the money and does not want to use the money. (Exhibit A, p. 4; Petitioner Testimony). Petitioner's assertion that she called her caseworker when she got the job was found credible. Petitioner's statements were specific and consistent. Petitioner's statements were also consistent with the disclosure on the assistance application regarding recent and upcoming job interviews. (Exhibit A, p. 50).

However, 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 overpayments caused by client or 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 February 1, 2022 to June 30, 2022 in the amount of \$[REDACTED]. However, based on Petitioner's credible testimony that she called her caseworker to report the employment, the overpayment appears to be due to agency error. 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] overpayment of FAP benefits from February 1, 2022 to June 30, 2022, which must be recouped. However, the Department did not act in accordance with Department policy when it processed the overpayment as a client error. The overpayment should be processed as an agency error.

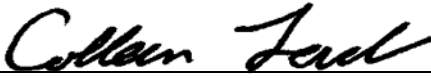
DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Process the \$[REDACTED] overpayment of FAP benefits from February 1, 2022 to June 30, 2022 as an agency error in accordance with Department policy.

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
Kael Meyer
Lake County DHHS
**MDHHS-Lake-
Hearings@michigan.gov**
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HoldenM

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BSC3HearingDecisions

Via-First Class Mail :

**MOAHR
Petitioner**

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