



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: July 26, 2024
MOAHR Docket No.: 24-007263
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 18, 2024, from Lansing, Michigan. The Petitioner was represented by ██████████ ██████████ Mother. The Department of Health and Human Services (Department) was represented by Dawn McKay, Overpayment Establishment Analyst (OEA).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-33.

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, 2021 to May 31, 2022 Petitioner received FAP benefits subject to recoupment totaling \$██████████ (Exhibit A, pp. 26-27)
2. On May ██████ 2021, Petitioner applied for FAP for herself. Petitioner reported that she was not currently enrolled in college/vocational school and had no income from employment or any unearned income. (Exhibit A, pp. 6-10)

3. During a May ■ 2021 interview, Petitioner reported living with her parents but they purchase and prepare food separately. Petitioner reported no current source of earned or unearned income. The rights and responsibilities were reviewed with Petitioner. (Exhibit A, pp. 11-13)
4. On June ■ 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, including changes with income or college school status. (Exhibit A, pp. 14-18)
5. While processing the May 2022 Redetermination, it was noted that Petitioner reported receiving unemployment benefits and that she started college in August 2021. (Exhibit A, p. 19)
6. Verification from the college showed that Petitioner did not meet any of the criteria for eligible student status found in BEM 245, (April 1, 2021), pp. 3-6. (Exhibit A, pp. 20-25)
7. On June ■ 2024, the redetermination was completed and ongoing FAP was denied because Petitioner was an ineligible student. (Exhibit A, p. 19)
8. The Department determined that Petitioner was overissued FAP benefits from November 1, 2021 to May 31, 2022 in the amount of \$■■■■■ due to client error of failing to timely report enrollment in college and not meeting the requirements to be eligible for FAP as a student. (Exhibit A, pp. 2 and 19-27)
9. On May ■ 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$■■■■■ overissuance of FAP benefits occurred from November 1, 2021 to May 31, 2022 due to client error and would be recouped. (Exhibit A, pp. 28-33)
10. On June 10, 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, August 1, 2021, p. 9. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. 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.

The Department determined that Petitioner was overissued FAP benefits from November 1, 2021 to May 31, 2022 in the amount of \$ [REDACTED] due to client error of failing to timely report enrollment in college and not meeting the requirements to be eligible for FAP as a student. (Exhibit A, pp. 2 and 19-27). Accordingly, May [REDACTED] 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$ [REDACTED] overissuance of FAP benefits occurred from November 1, 2021 to May 31, 2022 due to client error and would be recouped. (Exhibit A, pp. 28-33).

Petitioner did not report her enrollment in college until the May 2022 Redetermination. Petitioner reported that she started college in August 2021. (Exhibit A, p. 19). There was no evidence that Petitioner reported this change in student status within 10 days, as required by policy.

Petitioner's mother questioned where it came from that there would be an estimated family contribution of \$ [REDACTED] for Petitioner's college. Petitioner's mother testified that they did not contribute any money for Petitioner's college. (Exhibit A, p. 24; Mother Testimony). The Department received the documentation from the college, which would have been based on the Free Application for Federal Student Aid (FAFSA) for Petitioner. (Exhibit A, p. 24; OEA Testimony). The BEM 245 policy specifically states that the temporary expansion of student eligibility is based on an expected family contribution of \$0 based on the student's FAFSA. (Exhibit A, p. 22; BEM 245, p. 5).

Petitioner's mother explained Petitioner's circumstances and that there is no way she can repay the FAP benefits. Petitioner's mother requested forgiveness of the overpayment. (Mother 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 overpayments caused by client or agency error when the amount is at least \$250 per program. This Administrative Law Judge has no authority to change or make exceptions to Department policy.

Overall, the evidence supports the Department's determination that Petitioner received an overpayment of FAP benefits from November 1, 2021 to May 31, 2022 in the amount of \$ [REDACTED] due to client error. 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] overpayment of FAP benefits from November 1, 2021 to May 31, 2022 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
Shanna Ward
Osceola-Mecosta County DHHS
**MDHHS-Mecosta-Osceola-
Hearings@michigan.gov**

DHHS Department Rep.
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(OES)
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BSC3HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

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Authorized Hearing Rep.

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