



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: August 5, 2024
MOAHR Docket No.: 24-007264
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 July 23, 2024, from Lansing, Michigan. [REDACTED] [REDACTED] the 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 proceedings, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-49.

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 June 30, 2022 Petitioner received FAP benefits subject to recoupment totaling \$[REDACTED] (Exhibit A, pp. 14-16)
2. The FAP benefits for the months of March and April 2022 were excluded due to COVID policies in effect at that time. (Exhibit A, pp. 1 and 8)

3. On August █ 2021, Petitioner applied for FAP for herself and a child. Petitioner reported no income from employment at that time. Petitioner noted she started a new job and it did not work out. (Exhibit A, pp. 70-75)
4. On August █ 2021, 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 reminded Respondent of the responsibility to report changes within 10 days. A blank Change Report form was included. (Exhibit A, pp. 38-45)
5. On June █ 2022, Petitioner submitted a Renew Benefits adding the income from employment with █. Petitioner noted that the child support income ended May 31, 2022. (Exhibit A, pp. 76-78)
6. On August █ 2022, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing earned income of \$█ was included in the FAP budget. The Notice indicated Petitioner was now a simplified reporter. A simplified six month review was included. (Exhibit A, pp. 46-52)
7. A quarterly wage history indicated Petitioner had earnings during the overpayment period. (Exhibit A, pp. 53-54)
8. A report from The Work Number documented that Petitioner started employment with █ with a most recent start date of September █ 2021. Earnings from September 10, 2021 through December 10, 2022 were documented. (Exhibit A, pp. 55-65)
9. The Department also verified child support income during the overpayment period. (Exhibit A, pp. 66-69)
10. The Department determined that Petitioner was overissued FAP benefits from November 1, 2021 to June 30, 2022 in the amount of \$█ due to client error of failing to properly report earnings from employment. (Exhibit A, pp. 13 and 17-37)
11. On June █ 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$█ overissuance of FAP benefits occurred from November 1, 2021 to June 30, 2022 due to client error and would be recouped. (Exhibit A, pp. 7-12)
12. On June 18, 2024, 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, August 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 pended 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 June 30, 2022 in the amount of \$3,324.00 due to client error of failing to properly report earnings from employment. (Exhibit A, pp. 13 and 17-37). Accordingly, on June 6, 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$3,324.00 overissuance of FAP benefits occurred from November 1, 2021 to June 30, 2022 due to client error and would be recouped. (Exhibit A, pp. 7-12).

Petitioner believes there was a mix-up. Petitioner quit working at [REDACTED] to work somewhere else. Petitioner was not at the new job for two full weeks. That is when

Petitioner applied for FAP. Petitioner was not employed when she applied. Petitioner then was hired back by [REDACTED]. (Petitioner Testimony). The report from The Work Number documented that Petitioner started employment with [REDACTED] with a most recent start date of September [REDACTED] 2021. Earnings from September 10, 2021 through December 10, 2022 were documented. (Exhibit A, pp. 55-65). This was after Petitioner's August [REDACTED] 2021 application for FAP. (Exhibit A, pp. 70-75). However, when she returned to work, Petitioner was required to report the change in employment and income within 10 days of her first paycheck, which was September [REDACTED] 2021. (Exhibit A, pp. 70-75).

Petitioner indicated she had difficulty reaching her caseworker and she would have to reach out to the supervisor and wait for the supervisor to reach out back to her. Then the supervisor would then get the caseworker to do his job. Petitioner remembers getting paperwork stating she was only eligible for \$[REDACTED] in FAP. Petitioner spoke with the supervisor and was advised that due to with the COVID emergency, she may qualify for additional benefits so she may want to rethink cutting off her FAP case. Petitioner replied that if she qualified then go ahead and leave her on FAP. (Petitioner Testimony). It appears that the Notice of Case Action indicating Petitioner was eligible for \$[REDACTED] in FAP was issued August [REDACTED] 2022. (Exhibit A, pp. 46-52). Accordingly, it appears that this contact with the Department was after the November 1, 2021 to June 30, 2022 overpayment period at issued for this case.

Petitioner believes the overpayment was due to an error by the caseworker and the Department. Petitioner asserted that she did call and leave a message for the caseworker when she restarted employment with [REDACTED]. Petitioner also stated any documentation she submitted to the Department was sent by fax. (Petitioner Testimony). During the hearing proceeding, the OEA checked the case record and there was no indication Petitioner called to report restarting her employment. The only case comments during the relevant timeframe addressed the COVID emergency allotments being issued. (OEA Testimony).

Petitioner explained that she is unable to repay the \$[REDACTED] overpayment and will likely lose her house over this. Petitioner can barely afford to live right now. (Petitioner Testimony).

This Administrative Law Judge (ALJ) must review the Department's determination under the Department policies. The ALJ has no authority to change or make any exception to Department policy. 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.

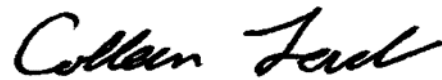
Overall, the evidence supports the Department's determination that Petitioner received an overpayment of FAP benefits from November 1, 2021 to June 30, 2022 in the amount of \$[REDACTED] due to client error. Therefore, the Department properly sought recoupment of a \$[REDACTED] overissuance of FAP benefits from Petitioner. The evidence in the case

record does not support Petitioner's assertion that she timely reported when the employment income restarted.

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 June 30, 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
Heather Dennis
Jackson County DHHS
**MDHHS-Jackson-
Hearings@michigan.gov**

DHHS Department Rep.
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MOAHR

Via-First Class Mail :

Petitioner

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