



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 23, 2024
MOAHR Docket No.: 24-008061
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 August 15, 2024, from Lansing, Michigan. [REDACTED] [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Krysenda Slayton, Overpayment Establishment Analyst (OEA).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-144 and documentation of Petitioner's benefit usage was admitted as Exhibit B, 1-2.

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. The Department documented that Petitioner received FAP benefits in September 2019 and January 2020 through June 2020. (Exhibit A, pp. 29-31)
2. On June [REDACTED] 2019, Petitioner applied for FAP and other benefits for herself. Petitioner reported recent employment with [REDACTED] [REDACTED] Petitioner indicated she was laid off. (Exhibit A, pp. 93-99)

3. On July █ 2019, an interview was completed with Petitioner. Petitioner reported she was laid off and expected to receive unemployment benefits. Petitioner was told to report within 10 days. The rights and responsibilities were reviewed with Petitioner. (Exhibit A, pp. 100-101)
4. On July █ 2019, a Verification Checklist was issued to Petitioner requesting several verifications with a due date of July 11, 2019. (Exhibit A, pp. 102-104)
5. On July █ 2019, Petitioner applied for cash assistance benefits for herself. Petitioner reported recent employment with █ Petitioner indicated she was laid off on June █ and was supposed to receive unemployment benefits, but she had not received anything. (Exhibit A, pp. 105-109).
6. On July █ 2019, a Notice of Case Action was issued to Petitioner approving FAP effective July 1, 2019. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. A blank Change Report form was included. (Exhibit A, pp. 110-118)
7. A Consolidated Income Inquiry search indicated Petitioner: received unemployment benefits with pay dates from July 13, 2019 to September 21, 2019 and had income from employment with █ the first and second quarter of 2019. (Exhibit A, pp. 80-83)
8. A New Hire search indicated Petitioner began employment with █ August 5, 2019. (Exhibit A, p. 84)
9. On September █ 2019, Petitioner applied for FAP and other benefits for herself. Petitioner reported current employment with █ (Exhibit A, pp. 119-125)
10. On September █ 2019, a Verification Checklist was issued to Petitioner requesting several verifications with a due date of October 4, 2019. (Exhibit A, pp. 126-128)
11. On October █ 2019, a Notice of Case Action was issued to Petitioner denying cash assistance effective October █ 2019 based on not having an eligible child in the group and failing to verify or allow the department to verify information necessary to determine eligibility. The Notice reminded Petitioner of the responsibility to report changes within 10 days. (Exhibit A, pp. 129-133)
12. On April 29, 2020, a Notice of Case Action was issued to Petitioner approving FAP for a household size of one effective October 1, 2019. A budget summary was included showing no earned income was included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. (Exhibit A, pp. 134-138)

13. On May █ 2020, a New Hire Client Notice was issued to Petitioner indicating a computer cross match showed employment with █ █ █ Petitioner was to provide verification by a due date of May 22, 2020. (Exhibit A, p. 91)
14. On May █ 2020, the New Hire Client Notice was returned. Petitioner reported a new address and answered some of the questions regarding the employment. (Exhibit A, pp. 91-92)
15. On June █ 2020, a Notice of Case Action was issued to Petitioner closing the FAP case effective July 1, 2020 based on not returning verifications. The Notice reminded Petitioner of the responsibility to report changes within 10 days (Exhibit A, pp. 139-143)
16. An Employee Wage History showed that Petitioner had wages as follows: █ in the first, second, and third quarters of 2019; █ █ █ in the third and fourth quarters of 2019; █ █ █ in the fourth quarter of 2019 and first, second, third, and fourth quarters of 2020; and █ █ Inc the fourth quarter of 2019 and first, second, third, and fourth quarters of 2020. (Exhibit A, pp. 50-52)
17. An Earnings Request documented that Petitioner began employment with █ █ October 21, 2019 with a first pay date of November 8, 2019. Petitioner's final paycheck was November 18, 2022. (Exhibit A, pp. 53-57)
18. An Earnings Request documented that Petitioner began employment with █ █ August 5, 2019 with a first pay date of August 16, 2019. Petitioner's final paycheck was October 25, 2019. (Exhibit A, pp. 58-66)
19. A report from The Work Number documented that Petitioner was employed with █ █ with pay dates from January 11, 2019 through July 12, 2019. (Exhibit A, pp. 67-70)
20. Paycheck records from another employer were obtained, but do not appear to show the employer name and are not clear images. (Exhibit A, pp. 71-79)
21. The Department determined that Petitioner was overissued FAP benefits from September 1, 2019 to February 29, 2020 due to client error in the amount of \$█ and from October 1, 2019 to June 30, 2020 due to agency error in the amount of \$█ (Exhibit A, pp. 28, 32-49)
22. On June █, 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$█ overissuance of FAP benefits occurred from October 1, 2019 to June 30, 2020 due to agency error and would be recouped. (Exhibit A, pp. 14-19)
23. On June █ 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$█ overissuance of FAP benefits occurred from

September 1, 2019 to February 29, 2020 due to client error and would be recouped. (Exhibit A, pp. 20-25)

24. On or about July 11, 2024, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 1 and 4-12)

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, January 1, 2019, 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. BAM 220, April 1, 2019, 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.

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. An overpayment may involve more than one overpayment type. If an agency error and client error occur in the same OP period, process as an agency error. BAM 700, p. 3. 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 June [REDACTED] 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$[REDACTED] overissuance of FAP benefits occurred from October 1, 2019 to June 30, 2020 due to agency error and would be recouped. (Exhibit A, pp. 14-

19). On June █ 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$█ overissuance of FAP benefits occurred from September 1, 2019 to February 29, 2020 due to client error and would be recouped. (Exhibit A, pp. 20-25). Accordingly, the Department gave notice of two overlapping overpayment periods, one considered agency error and one considered client error. The overlapping overpayment periods with different error types are also shown on the claim search. (Exhibit A, p. 28). This is contrary to the BAM 700 policy which directs that if an agency error and client error occur in the same OP period, it should be processed as an agency error. The listing of months occurred on each notice shows no duplication of months within the overlapping overpayment periods. The agency error months are October 2019, March 2020, April 2020, May 2020, and June 2020. The client error months are September 2019, January 2020, and February 2020. (Exhibit A, pp. 14-25). Accordingly, it appears that there should either be multiple client error and agency error overpayment periods that do not overlap, or a single overpayment period that is processed as agency error pursuant to the BAM 700 policy.

The Department documented that Petitioner received FAP benefits in September 2019 and January 2020 through June 2020. (Exhibit A, pp. 29-31). As noted above, October 2019 was included as an overpayment month. It is noted that the effective date ranges for the benefit inquiry summaries in the Department's Hearing Summary packet did not include October 2019. Accordingly, it is unclear if Department records document that FAP benefits were issued to Petitioner for the month of October 2019.

Additionally, the copy of the paycheck records from one of Petitioner's employers were obtained, but do not appear to show the employer name and are not clear images. It appears that poor quality images were submitted to the Department as they are marked "Best Image." (Exhibit A, pp. 71-79). It would be helpful if additional evidence, such as something to establish the employer for these paycheck records, was provided, if available.

Petitioner questioned whether any of the FAP benefits at issue for this case were spent. (Petitioner Testimony). As requested, the Department submitted documentation of FAP purchases from July 21, 2019 through June 19, 2020. (Exhibit A, p. 1).

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 indicates that an overpayment of FAP benefits occurred. However, overlapping overpayment periods with different error types is not consistent with the BAM 700 policy. Additionally, insufficient evidence was presented to establish that FAP benefits were issued to Petitioner for the month of October 2019. Accordingly, the alleged overpayment of FAP benefits should be redetermined.

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 failed to

satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner received the \$ [REDACTED] overissuance of FAP benefits from October 1, 2019 to June 30, 2020 due to agency error and the \$ [REDACTED] overissuance of FAP benefits from September 1, 2019 to February 29, 2020 due to client error. The Department should redetermine the alleged overpayment of FAP benefits at issue for this case.

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. Redetermine the alleged overpayment of FAP benefits from September 2019 through June 2020 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
Patty Marx
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BSC1HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

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