



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 15, 2019
MAHS Docket No.: 18-012950
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 January 10, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Jennifer Braxmaier, Recoupment Specialist.

ISSUE

Did the Department properly determine a Client Error overissuance (OI) of the Food Assistance Program (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On April 2, 2015, Petitioner submitted an application for FAP benefits listing himself, his wife, his adult daughter ██████████ (ADD), his minor daughter ██████████ his minor son ██████████ and his minor son ██████████ including Petitioner's employment income but no other source of income for the household.
2. Petitioner was issued \$██████████ in FAP benefit for April 2015, and then \$██████████ per month from May 2015 through September 2015.
3. Sometime in July 2015, the Department became aware of employment for ADD and issued a Wage Mach Client Notice to Petitioner on July 27, 2015.

4. On August 13, 2015, the Department received Petitioner's Semi-Annual Contact Report listing the monthly household income as \$ [REDACTED] and Petitioner indicated that there was no change in income greater than \$ [REDACTED] from the amount listed or a change, start, or stop in employment.
5. On August 24, 2015, the Department received a completed Wage Match Client Notice from Petitioner for ADD with payroll records from July 4, 2014, through August 14, 2015.
6. On November 20, 2018, the Department issued a Notice of OI to Petitioner for the period April 2015 through September 2015 for a total OI of \$ [REDACTED] as a result of a client error in failing to report ADD's earnings for the same period.
7. On December 17, 2018, the Department received Petitioner's request for hearing disputing the Department's assertion of an OI.

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.

In this case, the Department determined a Client Error OI as a result of the client's failure to report ADD's income to the Department in a timely manner. An OI is created when a client group receives more benefits than it is entitled to receive. BAM 700 (October 2018), p. 1. The Department is required to attempt to recoup the OI. *Id.* An Agency Error is caused by incorrect actions (including delayed or no action) by the Department staff or processes. BAM 705 (January 2016), p. 1. A Client Error OI is caused when a client gives incorrect or incomplete information to the Department. BAM 700, p. 7. OIs are not pursued if the estimated amount is less than \$250.00 per program. BAM 705, p. 1. Since Petitioner failed to report ADD's income from employment, her income was never considered in the calculation of the group's FAP benefit rate and Petitioner received more benefits than he was entitled to receive.

When the Department becomes aware or suspects that OI exists, the case worker is required to complete a DHS-4701 OI Referral within 60 days and provide it to a Recoupment Specialist. BAM 700, p. 10. Within 60 days of receiving the referral, the

Recoupment Specialist is required to determine if an OI actually occurred and if so, what type. BAM 700, pp. 11-12. Within 90 days of determining an OI, the Recoupment Specialist must obtain all evidence needed to establish an OI, calculate the amount, issue a DHS-4358A, B, C, & D to the client, enter the programs on Bridges, refer suspected Intentional Program Violations to the Office of Inspector General, and send a DHS-4701A, OI Referral Disposition to the case worker explaining the disposition. BAM 700, p. 12.

In this case, the Department first became aware of ADD's employment as early as July 27, 2015. The employment was then confirmed by Petitioner on August 24, 2015, when he submitted the completed form with payroll records. Therefore, the latest an OI referral should have been made to the Recoupment Specialist was October 23, 2015. Once the Recoupment Specialist received it, at the latest on October 23, 2015, the Recoupment specialist had 90 days to complete the review, make a decision, and issue a notice to Petitioner, or until January 20, 2016. The Department did not issue a Notice of Overissuance to Petitioner until November 20, 2018, more than two years and ten months after its action deadline pursuant to policy. Since the Department failed to follow appropriate procedures and policies, it is not entitled to the recoupment or collection of the alleged OI in this case.

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 did not act in accordance with Department policy when it determined an OI of FAP benefits.

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. Remove the OI of FAP benefits from Petitioner's case for the period April 2015 through September 2015;
2. Cease any recoupment or collection actions started in relation to this case.



AMTM/jaf

Amanda M. T. Marler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Jeannene Gatties
MDHHS-StClair-Hearings

DHHS Department Rep.

MDHHS-Recoupment

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

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A M T Marler
MAHS