



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: April 18, 2019
MAHS Docket No.: 19-002567
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 April 11, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Patrick Lynaugh, Recoupment Specialist, and Cynthia Hohman, Family Independence Specialist.

ISSUE

Did the Department properly determine a client error Food Assistance Program (FAP) overissuance (OI)?

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 September 17, 2016, the Department received Petitioner's application for FAP benefits listing herself, her husband, and her daughter, employment income for herself at [REDACTED] (Employer 1), and Retirement, Survivors, Disability Insurance (RSDI) income for her husband.
2. On October 18, 2016, the Department received a Verification of Employment form indicating that Petitioner's employment had ended with Employer 1 effective September 19, 2016 with her last paycheck dated October 7, 2016.

3. On December 2, 2016, the Department issued a Notice of Case Action to Petitioner informing her that she was approved \$[REDACTED] in FAP benefits for October 2016, and \$[REDACTED] in FAP benefits for November 2016 through September 2017 based upon a group size of three and \$[REDACTED] in unearned income.
4. On February 28, 2017, Petitioner submitted a letter and paystubs for pay dates January 12, 2017 through February 2, 2017 (weekly paystubs) to the Department; in the letter, Petitioner indicated that she had tried to submit her paystubs online but that there were technical problems preventing her from completing the submission.
5. On March 9, 2017, an OI Referral was sent to the Recoupment Specialist.
6. On January 10, 2019, the Department attempted to obtain wage information for Petitioner from [REDACTED] (Employer 2).
7. On February 21, 2019, the Department issued a Notice of OI to Petitioner informing her that she was responsible for a client error OI in the amount of \$[REDACTED] from October 2016 through March 2017 resulting from her error in not reporting earned income from Employer 2 on her FAP application from October 31, 2016.
8. On March 13, 2019, the Department received Petitioner's request for hearing disputing the determination of a client error OI.
9. On the same day, the Department attempted a second request from Employer to obtain earnings information for Petitioner.

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 asserted and Petitioner disputed a finding of a Client Error OI in the amount of \$[REDACTED] for the period from October 2016 through March 2017. An OI is created when a client group receives more benefits than it is entitled to receive. BAM 700 (October 2016), 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. 6. OIs are not pursued if the estimated amount is less than \$250.00 per program. BAM 700, p. 9.

Petitioner initially reported employment income on her application with Employer 1. She also reported the end of that employment a short time later via a Verification of Employment. Petitioner credibly testified that when she submitted the Verification of Employment for the end of her employment with Employer 1, she also submitted Verification of Employment for the start of Employer 2 because she was going from one job directly to the other. However, according to the Department, it did not receive any verifications of employment for the start of Employer 2. The Department was then delayed in processing the Verification of Employment for the end of Employer 1 until December 2, 2018 even though the verification was received on October 18, 2018. On December 2, 2018, the Department then issued a Notice of Case Action informing Petitioner of her recalculated FAP benefit rate based upon \$0.00 earned income. On February 28, 2017, Petitioner submitted paystubs to the Department for January 12, 2017 through February 2, 2017 with a note indicating

██████████ 9.50 per-hour 40 hours weekly
New Horizon Support Services
Paid weekly-Thursdays

I did report it online, but it doesn't show anything- I reported technical issues, because it now will not allow me to view or make changes. Everything says "pending". Did receive an email to report directly, just in case.

Based upon Petitioner's letter and the timeline of events, her version of events is credible. The Department appears to have been experiencing many difficulties with processing documents as shown by the Department's delay in processing the Verification of Employment for the end of Employer 1 as well as Petitioner's letter explaining her attempts to provide proof of employment online. Therefore, this case is not a client error, but instead an Agency error OI.

In Agency error cases, the OI period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the Recoupment Specialist, whichever 12-month period is later. BAM 705, p. 5. To determine the first month of the OI for changes which were reported timely and not acted on, the Department must provide the 10-day full standard of promptness for change processing pursuant to BAM 220 and the 10-day negative action suspense period also pursuant to BAM 220. BAM 705, pp. 5-6. Petitioner's loss of employment with Employer 1 and attempt to report employment with Employer 2 was on October 18, 2016. After application of the 10-day standard of promptness and the 12-day negative

action suspense period, the OI should properly begin on December 1, 2016. Therefore, the OI as calculated by the Department for October and November 2016 is removed from the calculation of the total OI.

To support its calculation of the OI, the Department presented OI budgets for the OI period. In each budget, the only items changed were related to Petitioner's employment income. Policy provides that in calculating an OI, if improper budgeting of income caused the OI, the actual income for the past OI month is the amount that is used. BAM 705, p. 8. However, policy also provides that if the Department is unable to obtain verification of wages, the Department may average the income as shown by the Wage Match to determine the monthly income amount. BAM 801 (October 2016), p. 3. In this case, the Department attempted to obtain verification of Petitioner's wages for the OI period, but was unsuccessful. Therefore, for the OI period, the Department used the Wage Match averages to calculate Petitioner's income.

For December 2016, the Wage Match showed Petitioner as having \$[REDACTED] in earned income from Employer 2 which the Department properly averaged as \$[REDACTED] in earned income. Since Petitioner had attempted to report this income through the Verification of Employment and online, she is eligible for the 20% earned income deduction. The group also had unearned income of \$[REDACTED] and the Department properly applied the standard deduction of \$151.00 for a group size of three. Therefore, the Adjusted Gross Income for the house was \$[REDACTED] although the Department did not consider a medical expense deduction. The Department then budgeted \$[REDACTED] for a mortgage expense, but failed to consider the heat and utility (H/U) standard. In reviewing the Notice of Case Action from December 2, 2016, the budget was calculated after consideration of \$[REDACTED] in medical expenses as well as the H/U standard deduction. The evidence is unclear if the medical expense deduction was applied to October 2016 or November 2016, ongoing. Therefore, the Department's failure to at least include the H/U standard deduction as had previously been budgeted, and possibly the medical expense deduction as well, was not in accordance with policy.

The Department repeated the same error in failing to consider the H/U for the remaining months of the OI period. Therefore, the Department has not met its burden of proof in establishing that it has properly calculated the OI in Petitioner's FAP 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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined a client error OI of FAP benefits to Petitioner for the period October 2016 through March 2017 in the amount of \$[REDACTED]

Based upon this finding, the Department is not precluded from attempting to establish an Agency Error OI from December 2016 through March 2017.

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. Delete and cease recoupment or collections of the Client Error OI claim for the period October 2016 through March 2017 in the amount of \$ [REDACTED]



AMTM/

Amanda M. T. Marler
Administrative Law Judge
for Robert Gordon, 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 Department Rep.

MDHHS-Recoupment

DHHS

Tricia Pleva
MDHHS-Kalkaska-Hearings

Petitioner

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

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