



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

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

Date Mailed: May 13, 2019
MOAHR Docket No.: 19-003674
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 May 8, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Patrick Lynaugh, Recoupment Specialist.

ISSUE

Did the Department properly determine that Petitioner had received an Agency Error 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. Petitioner last received FAP benefits effective April 30, 2014.
2. Effective May 1, 2014, the Department closed Petitioner's case or held it in Redetermination pending status for an indefinite period.
3. Beginning August 16, 2016, Petitioner was incarcerated.
4. On February 17, 2017, Petitioner was released from his incarceration.
5. Due to an error of the Department, Petitioner's FAP case was reopened, without an application or the redetermination processing ever being submitted or completed by Petitioner between May 2014 and July 2017.

6. On July 19, 2017, the Department issued a Notice of Case Action to Petitioner on Roselynn Street in Westland, Michigan notifying him that he was approved for FAP benefits in the amount of \$ [REDACTED] per month based upon a group size of two for the period September 1, 2016 through July 31, 2017.
7. On July 19, 2017, the Department made a lump sum FAP benefit of \$ [REDACTED] available to Petitioner on his Electronic Benefit Transfer (EBT) card for the period September 2016 through July 2017.
8. On August 30, 2017, the Department created an OI Referral after realizing that the case had been certified in error.
9. Between July 2017 and January 11, 2018, the benefits stayed on Petitioner's EBT card.
10. Beginning January 12, 2018, the FAP benefits on Petitioner's EBT card were used until the benefits were almost completely exhausted on April 9, 2018, for a total transaction value of \$ [REDACTED]
11. On March 11, 2019, the Department issued a Notice of Overissuance to Petitioner at an address on [REDACTED] Michigan indicating that Petitioner had received an OI of FAP benefits in the amount of \$ [REDACTED] due to an Agency Error for the period September 1, 2016 through July 31, 2017.
12. On April 1, 2019, the Department received Petitioner's request for hearing disputing the determination 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 that Petitioner received an OI of FAP benefits due to Agency Error in the amount of \$ [REDACTED] for the period September 2016 through July 2017. An OI is the amount of benefits issued to the client group in excess of what the client is eligible to receive. BAM 700 (January 2016), p. 1. Agency Error OIs are

caused by incorrect action, including delayed action or no action, by the Department staff or Department processes. BAM 700, p. 2. Client error OIs occur when the client receives more benefits than they were entitled to receive because the client gave incorrect or incomplete information to the Department. BAM 700, p. 6.

The Department erred by reopening or removing the pending status from Petitioner's case and issuing benefits without Petitioner's completion of the Redetermination process in 2014 or a new Application having been filed by Petitioner in 2016 or 2017. Therefore, if there is an OI, it would be considered an Agency Error OI.

The Department uses the redetermination process to evaluate, redetermine, and renew an individual's eligibility for active programs. BAM 210 (July 2016), p. 1. Verifications are due the same date that the Redetermination is due or the interview date. BAM 210, p. 16. A group loses its right to uninterrupted FAP benefits if it fails to file the Redetermination by the due date, participate in a scheduled interview, or submit verifications timely provided the requested submittal date is after the timely filing date. BAM 210, p. 20. Therefore, if the process is not completed by the due date or interview date, the FAP case closes. So, when the Department did not receive all required verifications in addition to the Redetermination, the FAP case was effectively closed. As seen in the case, the Department failed to actually implement the closure and instead the case remained in a pending status for more than four years. Since Petitioner had zero contact with the Department and the Department had no contact with Petitioner from at least May 1, 2014 through at least July 19, 2017, when the Notice of Case Action was mistakenly issued, Petitioner's FAP case was effectively closed.

But then, due to other complications related to Petitioner's FAP case, the Department opened a FAP case for Petitioner without an application and without completion of the 2014 Redetermination process and without receiving a new application. Policy provides that the Department cannot recoup OIs caused by the Agency's error in failing to obtain a signature on an application. BAM 705 (January 2016), p. 2. Since Petitioner's FAP case was effectively closed May 1, 2014, the Department would have needed a new signed FAP application to issue benefits on July 19, 2017, for the period September 2016 through July 2017, the Department did not obtain a signature and cannot recoup the benefits. At the hearing, the Department's failure to receive a new application was the Department's primary argument for its attempt to recoup the benefits. Since the Department had no new signed application for the relevant period and the case was not properly reopened, the Department cannot recoup the OI for September 2016 through July 2017.

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 that Respondent received a recoupable OI of FAP benefits in the amount of \$ [REDACTED] for the period September 2016 through July 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 Agency Error OI claim for the period from September 2016 through July 2017 in the amount of \$ [REDACTED]

AMTM/jaf



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 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

DHHS

Jeanenne Broadnax
MDHHS-Wayne-18-Hearings

DHHS Department Rep.

MDHHS-Recoupment

Petitioner

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

L Bengel
M Holden
D Sweeney