



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: August 20, 2019
MOAHR Docket No.: 19-006645
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 August 19, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED], Recoupment Specialist.

ISSUE

Did the Department properly determine that Petitioner received an Agency Error overissuance (OI) of Food Assistance Program (FAP) benefits?

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 has been an ongoing FAP recipient.
2. Petitioner is also a recipient of Retirement Survivors Disability Insurance (RSDI) benefits in the amount of [REDACTED] per month from January 2018 through December 2018 and \$[REDACTED] per month effective January 2019.
3. The Department has been budgeting on an ongoing basis [REDACTED] in medical expenses which are comprised of one-time (medical, dental, vision, transportation, and lodging) and reoccurring medical expenses (insurance premiums and Medicare Part B premium) from 2011 through 2013, some of which were duplicates.

4. Petitioner began employment with [REDACTED] (Employer) in the end of July 2018.
5. On August 17, 2018, Petitioner received her first paycheck from Employer.
6. Petitioner admits that she did not timely report the start of her employment.
7. On September 24, 2018, the Department received Petitioner's completed Redetermination and on which Petitioner failed to provide information related to her new employment.
8. For the period October 2018 through March 2019, Petitioner received [REDACTED] per month in FAP benefits.
9. As of December 2018, Petitioner was eligible for and receiving Medicare Part B coverage through the State of Michigan Medicare Savings Program (MSP) and was no longer responsible for her Medicare Part B premiums.
10. On March 19, 2019, Petitioner provided the Department with check stubs from Employer for pay dates January 18, 2019 and January 24, 2019.
11. On April 17, 2019, Petitioner's case worker created an OI Referral based upon the medical expenses and employment income.
12. On June 5, 2019, the Department issued a Notice of Overissuance to Petitioner informing her that the Department had determined that she had received an Agency Error OI for the period October 2018 through March 2019 in the amount of [REDACTED] due to the Department's failure to properly budget medical expenses as well as Petitioner's failure to timely report earnings.
13. On June 19, 2019, the Department received Petitioner's request for hearing disputing the determination of an Agency Error 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, Petitioner disputes the Department's assertion of an Agency Error OI in the amount of \$[REDACTED] for the period October 2018 through March 2019. An OI is created when the Department issues more benefits to a client group 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 (October 2018), p. 1. A Client Error OI is caused when a client gives incorrect or incomplete information to the Department. BAM 700, p. 7. When the Department determines that there is an Agency Error OI, the Department may only establish a claim for an OI beginning the first month the benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the RS, whichever 12-month period is later. BAM 705, p. 5.

The Department determined that Petitioner received an OI of FAP benefit based upon two items. First, the Department argued that the Department had improperly budgeted ongoing medical expenses for Petitioner since 2011 and 2013, some of which were duplicates. Medical expenses can be budgeted as one-time expenses or as ongoing expenses depending on the individual's circumstance and the type of expense. BEM 554 (August 2017), p. 8-12. Second, the Department argued that Petitioner failed to report her earned income to the Department on a timely basis. FAP clients are required to report the start of employment or receipt of new wages within ten days of the change itself. BAM 105 (January 2018), p. 12; BEM 501 (October 2018), p. 9-11.

If both allegations are accurate, Petitioner would have received an OI and because the Department is conceding an error on its part by continuing to budget ongoing medical expenses, the OI would be considered an Agency Error OI. However, the record reflecting medical expense deductions on Petitioner's FAP case shows that the Department budgeted a Medicare Premium Part B of [REDACTED] twice for Petitioner in 2011. Then in 2013, the Department budgeted [REDACTED] for health/hospitalization insurance premiums, [REDACTED] for the same reason, another [REDACTED] for the exact same reason, and [REDACTED] for Medical/Dental/Vision Services including transportation/lodging to obtain services. In total, the Department was budgeting [REDACTED] in total expenses reduced by the [REDACTED] offset for a budgetable deduction of [REDACTED]. BEM 554, p. 1. While it is clear from the record that the Department erred in budgeting some of Petitioner's medical expenses because she was not paying the Medicare Part B premium twice, nor is it likely she was paying [REDACTED] twice for the same reason, the evidence does not support that Respondent was not responsible for any of these items warranting their removal from the budget. All but one of the items budgeted are reoccurring and continuing expenses (insurance premiums and Medicare Part B premiums). The Department has not adequately established that at least some of these expenses were not ongoing expenses or that they all were improperly budgeted.

In reviewing the State Online Query (SOLQ), an interface with the Social Security Administration accessible by the Department to aid it in determining a client's Social Security Benefit and Medicare participation, submitted by the Department as evidence of Petitioner's income, the document shows that Petitioner was eligible for Medicare Part B as of February 2009. It also shows that Petitioner did not become eligible for or start receiving assistance from the State of Michigan through the Medicare Savings Program (MSP) for her Medicare Part B Premium until December 2018, two months after the OI period began. Since Petitioner was responsible for the Medicare Part B Premium as of February 2009 and because she was still responsible for it in October and November 2018, the Department erred in removing at least one of the two Medicare Part B premiums.

Next, during the hearing the Department was questioned whether there was any measure taken to verify any of the medical expenses budgeted from 2011 or 2013 prior to their removal from the case especially because at least three items were budgeted as insurance premiums. Insurance Premiums are typically ongoing expenses and vary slightly from year to year. The Department conceded that there had been no effort to verify any of the medical expenses. When Petitioner was questioned during the hearing about whether she was responsible for any insurance premiums as of October 2018, she responded yes because she was enrolled in the Freedom-To-Work Medicaid program (FTW). FTW is an SSI-related Group one Medicaid category available to clients with disabilities age 16 to 64 who have earned income. BEM 174 (January 2017), p. 1. Individuals enrolled in this program have a premium of 2.5% of their income for individuals with Modified Adjusted Gross Income (MAGI) income between 138% of the Federal Poverty Level (FPL) and \$75,000.00 annually. *Id.* Individuals who have income greater than \$75,000.00 annually are assessed a premium of 100% of the average FTW participant cost. *Id.* Since Petitioner credibly testified that she was enrolled in FTW and because the Department failed to verify any of the potentially ongoing medical expenses including multiple listings for insurance premiums, the Department has not met its burden of proof.

Therefore, based upon all of the evidence presented, the Department was aware of and should have verified Petitioner's ongoing medical expenses through other sources including its own Medicaid programs and the SOLQ.

In each of the OI budgets from the Department, all medical expenses listed in Bridges were ended and Petitioner's income was added as earned income. However, since the Department erred in removing at least one of the Medicare Part B Premiums for October and November 2018, and because the Department failed to verify if any of the insurance premium expenses were ongoing in addition to Petitioner's credible testimony that she was responsible for an FTW insurance premium, the Department has not met its burden of proof that an OI occurred.

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 had received an Agency Error OI totaling [REDACTED] for the period October 2018 through March 2018.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**; the Department has not established a claim for an Agency Error OI in the amount of [REDACTED]

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 the claim for [REDACTED] for the period October 2018 through March 2019;
2. Cease recoupment or collections efforts in the amount of [REDACTED] for the period October 2018 through March 2019.

AM/tm



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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DHHS Department Rep.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CC:

[REDACTED]
[REDACTED]