



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]

Date Mailed: February 24, 2020  
MOAHR Docket No.: 19-013569  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **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 3-way telephone hearing was held on February 20, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Latoi Patillo, recoupment specialist, and Crystal Hackney, supervisor.

### **ISSUE**

The issue is whether MDHHS established a recipient claim of \$4,830 related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner from March 2018 through January 2019.

### **FINDINGS OF FACT**

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of March 2018, Petitioner was an ongoing recipient of FAP benefits.
2. From March 2018 through January 2019, Petitioner received child and spousal support ranging from \$764 in July 2018 to \$5388 in October 2018.
3. From March 2018 through September 2018, Petitioner received \$504 per month in FAP benefits. Petitioner's FAP eligibility did not factor any child or spousal support income.

4. On June 21, 2018, MDHHS mailed Petitioner a Notice of Case Action informing Petitioner of an approval of \$504 in FAP benefits beginning June 2018. A summary of budget factors listed \$0 in unearned income for Petitioner.
5. From October 2018 through January 2019, Petitioner received \$505 per month in FAP benefits. Petitioner's FAP eligibility did not factor any child or spousal support income.
6. On February 25, 2019, an overissuance referral was made concerning unbudgeted child and spousal income on Petitioner's case.
7. On November 22, 2019, MDHHS determined that Petitioner received an overissuance (OI) of \$4,830 in FAP benefits from March 2018 through January 2019 due to agency-error. The determination factored the same income and expenses from Petitioner's original FAP issuances, other than the addition of Petitioner's actual child and spousal support from each benefit month.
8. On November 22, 2019, MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued \$4,830 in FAP benefits to Petitioner from March 2018 through January 2019 due to agency-error.
9. On [REDACTED], 2019, Petitioner requested a hearing to dispute the alleged OI of \$4,830.

### **CONCLUSIONS OF LAW**

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute MDHHS' attempt to establish an OI related to allegedly overissued FAP benefits. A Notice of Overissuance and related summary dated November 22, 2019, alleged that Petitioner received an OI of \$4,830 in FAP benefits from March 2018 through January 2019 due to agency error. Exhibit A, pp. 1-2.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), pp. 1-2. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.*

Federal regulations refer to overissuances as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a). Recipient claim amounts not caused by trafficking are

calculated by determining the correct amount of benefits for each month there was an OI and subtracting the correct issuance from the actual issuance.<sup>1</sup> CFR 273.18(c)(1).

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). MDHHS pursues FAP-related agency errors when they exceed \$250. BAM 705 (October 2018), p. 1.

Clients requesting hearings disputing agency-error overissuances typically contend that they should not be required to repay an overissuance caused by MDHHS' error. MDHHS may pursue agency-caused OIs as long as the amount exceeds \$250. There is no maximum limit to the amount of OI that may be recouped. Thus, MDHHS may establish an OI against Petitioner, if the OI is established to exceed \$250.

MDHHS does impose a limit on the overissuance period for agency-related FAP errors. The OI period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the RS, whichever period is later. *Id.*, p. 5. A recoupment specialist credibly testified that an OI referral was made concerning Petitioner's case on February 25, 2019. Limiting MDHHS to 12 months from before the OI date allows MDHHS to begin Petitioner's OI period in March 2018; MDHHS began Petitioner's OI period in March 2018. Thus, MDHHS properly determined Petitioner's beginning month of OI.

MDHHS alleged that Petitioner's OI was caused by unbudgeted child and spousal support. MDHHS presented documentation of Petitioner's actual child support (Exhibit A, pp. 35-40) and spousal support (Exhibit A, pp. 41-43). MDHHS presented FAP-OI budgets from March 2018 through January 2019 which demonstrated how an OI was calculated. Exhibit A, pp. 7-30. In accordance with policy, each FAP-OI budget factored Petitioner's actual income from child and spousal support. *Id.*, p. 8. A recoupment specialist credibly testified that no other eligibility factors were changed from budgets corresponding to Petitioner's original FAP issuances. As verified from Petitioner's benefit history, the budgets factored Petitioner's actual FAP issuances from the OI period. Exhibit A, pp. 31-32. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$4,830 was properly calculated.

Petitioner did not dispute any of the calculations involved in the OI. Petitioner also did not claim MDHHS did not have a right to repayment. Petitioner's primary concern was the high amount of the OI and her anticipated hardship in paying the amount of OI.

MDHHS can reduce or vanquish recipient claims when the overissuance cannot be paid within three years due to economic hardship. BAM 725 (October 2017), p. 1. Requests for hardship must be made from the recoupment specialist to the Overpayment, Research and Verification Section office outlining the facts of the situation and client's financial hardship. *Id.* The manager of the MDHHS Overpayment, Research and

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<sup>1</sup> Additionally, MDHHS is to subtract any benefits that were expunged (i.e. unused benefits which eventually expire from non-use). There was no evidence that any of Petitioner's FAP benefits were expunged.

Verification Section has final authorization on the determination for all compromised claims. *Id.*

MDHHS limits jurisdiction to determining hardships to its own agency. Thus, administrative hearing jurisdiction cannot be extended to consider whether Petitioner is eligible for a hardship. Though Petitioner cannot be given a remedy of a reduced or eliminated OI in the administrative hearings process, she is encouraged to pursue the same through MDHHS.

The evidence established that Petitioner received an OI of \$4,830 in FAP benefits from March 2018 through January 2019 due to agency-error. The evidence further established that MDHHS employed proper procedures in establishing an OI against Petitioner for the OI.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly established a recipient claim of \$4,830 for FAP benefits overissued to Petitioner from March 2018 through January 2019 due to agency-error. The actions taken by MDHHS are **AFFIRMED**.

CG/cg



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**Christian Gardocki**

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

**Via Email:**

MDHHS-Oakland-3-Hearings  
MDHHS-Recoupment-Hearings  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MOAHR

**Petitioner – Via First-Class Mail:**

