



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: December 23, 2020
MOAHR Docket No.: 20-005323
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, telephone hearings were held on September 10, 2020; October 1, 2020; October 29, 2020; and December 16, 2020. Petitioner appeared at the September 10, 2020 and October 1, 2020 hearings, but did not appear at the October 29, 2020 hearing. As a result, an Order of Dismissal was issued in this matter for failure to appear. Subsequent to the Order of Dismissal, Petitioner requested that the dismissal be vacated. On November 13, 2020, Administrative Law Judge Manager Alice Elkin found good cause for Petitioner's request to vacate the dismissal and issued an Order Vacating Order of Dismissal and Notice of Continued Hearing. The final hearing was held on December 16, 2020 with all parties present. The Petitioner was self-represented and had her daughter, [REDACTED] appear as both a witness and translator in each hearing. The Department of Health and Human Services (Department) was represented by Minnie Egbunu, Recoupment Specialist.

ISSUE

Did the Department properly determine an Agency Error Overissuance of Food Assistance Program (FAP) benefits totaling \$1,630.00 for the period March 1, 2019 through February 29, 2020?

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 May 29, 2015, the Department received verification of a Property Transfer Affidavit showing that Petitioner and Petitioner's Husband [REDACTED] (Husband) took ownership of the property where they lived.
2. On [REDACTED] 2015, Petitioner submitted a Semi-Annual Contact Report to the Department which indicated that she had a \$600.00 payment for her house.
3. At some point in 2018, Petitioner paid off her mortgage.
4. On [REDACTED] 2019, the Department received verification of Petitioner's 2018 Summer Tax Bill in the amount of \$651.67 including a \$240.00 Solid Waste Fee and 2018 Winter Tax Bill of \$66.36.
5. On July 23, 2019, the Department received wage verifications for Husband for his work with [REDACTED] (Employer) listing the following gross wages:
 - a. June 28, 2020 \$509.38
 - b. July 5, 2019 \$500.00
 - c. July 12, 2019 \$500.00
 - d. July 19, 2019 \$500.00
6. On the same day, the Department received verification of Petitioner's wages for the period May 1, 2019 through May 26, 2019 in the amount of \$275.85.
7. On the same day, the Department also received verification of Petitioner's 2019 Summer Property Tax Bill in the amount of \$676.01 which included the \$240.00 Solid Waste Fee.
8. On [REDACTED] 2019, the Department received plane tickets indicating Husband had left the United States beginning December 12, 2019 and would return home on February 3, 2020; Petitioner's case worker removed Husband from the group.
9. On February 21, 2020, the Department completed an audit of Petitioner's FAP case for the month of October 2020 concluding that the Department had committed an Agency Error in failing to budget reported income correctly, in continuing to budget a \$600 "rental" expense, as well as its inclusion of a \$240 waste expense when considering Petitioner's annual property taxes resulting in an OI totaling \$94.00 for October 2020.
10. In July of 2020, the Department received additional wage verifications for Husband from Employer showing he received income while abroad.
11. On July 29, 2020, the Department issued a Notice of Overissuance to Respondent advising her that the Department had determined she had received an Agency

Error Overissuance for the period March 1, 2019 through February 29, 2020 in the amount of \$1,630.00 because there had been an error in income calculation, Husband had been improperly removed from the group, and an incorrect shelter expense had been budgeted.

12. On August 7, 2020, the Department received Respondent's request for hearing disputing the Department's determination of a FAP 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 determination of an Agency Error OI in the amount of \$1,630.00 for the period March 1, 2019 through February 29, 2020. Client error OIs exist when a client gives incorrect or incomplete information to the Department. BAM 715 (October 2017), p. 1. Agency error OIs are caused by incorrect actions, including delays or no action, by the Department. BAM 705 (October 2018), p. 1. The Department must attempt to recoup all FAP OIs greater than \$250.00. BAM 700 (October 2018), pp. 1, 10; 7 CFR 273.18(a). Policy further provides that if upon a timely hearing request, an administrative hearing decision upholds the Department's actions, the client must repay the OI. BAM 700, p. 3. In Agency Error OI cases, the Department can only establish an OI for the period beginning the first month when the benefit issuance exceeds the amount allowed by policy, or the 12 months before the date the Overissuance was referred to the Recoupment Specialist, whichever 12 month period is later. BAM 705, p. 5. Federal Regulations also provide that in calculating a claim amount, the State Agency must calculate a claim back to at least 12 months prior to when the Agency became aware of the overpayment, but may not include any amounts that occurred more than six years before the Agency became aware of the overpayment. 7 CFR 273.18(c)(1)(i).

The Department discovered via the Quality Control Audit in February 2020 that the Department had not properly considered household income beginning July 2019 nor had it properly considered housing expenses since July 2015. Upon further review, the recoupment specialist determined that the Department had also erred during this period

by removing Husband and his wages from the group while he was abroad. To support its case, the Department presented overissuance budgets showing how the OI was calculated in each month between March 2019 and February 2020.

Starting with the first issue of consideration of household income, in July 2019, Petitioner submitted a Semi-Annual Contact Report as well as wage verifications for Husband and herself. At the time these wages were submitted, the Department failed to consider them in the ongoing budget. Policy provides that after verifications are received, the Department is required to process the verifications within ten days. BAM 220 (January 2019), p. 7.

To determine whether the Department properly determined Petitioner's FAP eligibility, the evaluation first starts with consideration of all countable earned and unearned income available to the group. BEM 500 (July 2017), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2017), p. 1. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Petitioner is paid on a monthly basis and had earnings for May 2019 totaling \$275.85 and because her earnings are received monthly, there is no need to further standardize the income. Husband's earnings are received weekly: \$509.38, \$500.00, \$500.00, and \$500.00. To standardize his income, the income is averaged and multiplied by 4.3 for a gross standardized monthly income of \$2,160.08. BEM 505, p. 8. Thus, total household earned income was \$2,435.93. The Department properly considered this change effective August 1, 2020 in the overissuance budgets.

The second issue found in Petitioner's FAP budgets was related to her housing expenses. The Quality Control Audit improperly classifies Petitioner's \$600.00 housing expense as a rental expense that was continued after the purchase of her home. In reality, the Property Transfer Affidavit shows that Petitioner purchased the home with a \$15,000.00 down payment and financing of \$20,000.00. On the [REDACTED] 2015 Semi-Annual Contact Report, Petitioner indicated she had a change in her housing expenses stating, "Payment for house \$600." Thus, the \$600.00 was not actually a rental expense but instead a mortgage expense. Despite the Department's error in the Audit, Petitioner conceded at the hearing that she paid off her mortgage in 2018. Therefore, for purposes of the OI period in this case, no expense should have been budgeted for a mortgage or a rental expense and the Department's removal of the expense from Petitioner's budget between March 2019 and February 2020 was correct.

In addition, the Quality Control Audit noted that Petitioner's property taxes included a line item for Waste Removal which was improperly budgeted because waste removal is already considered as part of the standard utility deductions. Specifically, the 2019 City of Detroit Summer Tax Bill shows a "Solid Waste Fee" of \$240.00 which was included in the overall tax on the property. The Solid Waste Fee was also seen on the 2018 City of

Detroit Summer Tax Bill. Policy provides that housing expenses include: mortgage, other payments including interest leading to the ownership of a shelter occupied by the FAP group, property taxes, and state and local assessments among other things. BEM 554, pp. 13-14. Policy further provides that FAP groups that have no heating or cooling expense but have a responsibility to pay for trash or garbage removal separate from their rent, mortgage, or condo fees must use the trash removal standard deduction. BEM 554, p. 23. However, in situations where a client is responsible for their heat and utility costs including cool, they receive the heat and utility standard deduction (H/U) and are not eligible for any other individual utility standards including the trash removal standard deduction. BEM 554, p. 15. After reviewing policies and federal regulations applicable to this issue, the Department's assertion is correct, the waste fee should have been removed from the overall tax bill because it was already accounted for when Petitioner received the H/U. Since Petitioner's total 2019 Summer Tax Bill was \$676.01 and the 2018 Winter Tax was \$66.36, and after deducting the \$240.00 Solid Waste Fee, the annual property tax is \$502.37 resulting in a \$41.86 monthly tax bill. The Department properly budgeted Petitioner's housing cost as \$41.86 as of July 2019 when the 2019 Summer Tax verification was submitted. It is unclear how the Department calculated the Tax for March 2019 through June 2019, but because the budgeted amount is greater than that expected and is beneficial to Petitioner, the tax amount will remain unchanged for March through June 2019.

Finally, the Department argued that it had committed an Agency Error by removing Husband from the group upon his showing that he would be traveling from December 12, 2019 through February 3, 2020. Policy provides that FAP group composition is determined by who lives together, the relationships of those living together, whether those individuals purchase and prepare food together, and whether there are any other special living situations. BEM 212 (January 2017), p. 1. Living together is defined as sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom, or living room. BEM 212, p. 3. Individuals may be temporarily absent from their FAP group and still be considered as part of the group. BEM 212, p. 3. A person's absence is considered temporary if all of the following are true: the person's location is known, the person lived with the group before the absence, there is a definite plan to return, and the absence has lasted or is expected to last 30 days or less. *Id.* The only exception to the rule is for situations when a person is in a hospital and there is a plan for that person to return to the home. *Id.* Petitioner's husband was absent from the group for a period longer than 30 days. His expected or actual absence from the home was for 53 days. Therefore, Husband's absence cannot be considered temporary pursuant to policy. The Department's initial removal of Husband, including any assets and income, from the group was proper and the Department's later decision to add him back in the group while calculating the OI was not. For group member deletions and additions, the Department must process the change and make it effective as of the next benefit issuance. Therefore, Husband and income should not be included in the group for January and February 2020 because of his travel. The Department's OI budgets from these months include Husband and his vacation income incorrectly; therefore, the OI attributable to these months (\$724.00) is removed from the total OI value.

These items were the only items changed in Petitioner's FAP budgets in order to calculate the overissuance. After reviewing each month individually, the Department properly calculated the corrected benefit rate and overissuance attributable to each month between March 2019 and December 2019. Therefore, the Department has established an OI totaling \$906.00.

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 calculated an Agency Error OI totaling \$1,630.00 for the period March 2019 through February 2020.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established an Agency Error OI of FAP benefits.

The Department is ORDERED to **reduce** the OI to \$906.00 for the period March 2019 through February 2020, and initiate recoupment/collection procedures in accordance with Department policy.

AMTM/cc



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

Via Email:

MDHHS-Recoupment-Hearings
MDHHS-Wayne-41-Hearings
BSC4-HearingDecisions
M. Holden
D. Sweeney
MOAHR

Petitioner- Via USPS:

