



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: October 21, 2020
MOAHR Docket No.: 20-005774
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 October 20, 2020. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Rhonda Holland, 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 is an ongoing FAP recipient.
2. Petitioner has a FAP group size of six.
3. At one point or another, five of the six FAP group members received Retirement Survivors Disability Insurance (RSDI) benefits.
4. One group member stopped receiving his RSDI benefit in December 2018.
5. Another FAP group member stopped receiving her RSDI benefits in April 2019.
6. Three other FAP group members continued to receive their RSDI benefits during all relevant periods in this case.

7. On February 12, 2020, Respondent began employment with [REDACTED].
8. On March 17, 2020, the Department issued a New Hire Client Notice to Petitioner which was not returned.
9. The Department failed to take any action on the New Hire match until July of 2020.
10. On July 30, 2020, the Department created an OI Referral.
11. On September 2, 2020, the Department issued a Notice of Overissuance to Petitioner informing her that the Department had determined she had received an Agency Error OI in the amount of \$3,602.00 for the period May 2020 through August 2020 because the Department had failed to take action on known employment income.
12. On September 4, 2020, the Department received Petitioner's request for hearing disputing the Department's 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, the Department asserts that Petitioner received an Agency Error OI totaling \$3,602.00 for the period May 2020 through August 2020 because the Department failed to act on known income. 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. 5, 10. 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 determining the value of the OI, the Department utilized paychecks received from Employer from February 2020 through August 2020. In addition, the Department utilized items which were previously budgeted. However, Petitioner disputed the

Department's utilization of RSDI benefits for two members of the group because these group members no longer received the benefit. A review of 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, supported Petitioner's assertions that the benefits stopped for these group members in 2018 and 2019 respectively.

Policy provides that the Department should "use available electronic methods (for example consolidated inquiry or SOLQ) to verify income. When electronic verification is not available or inconsistent with client statement, the client has primary responsibility for obtaining verification." BEM 500 (July 2017), p. 14. In this case, the Department failed to verify the group's receipt of RSDI benefits since 2018. This was another Agency Error in relation to Petitioner's FAP case. Furthermore, since the Department included the RSDI benefits in the OI budgets, Petitioner's overall income was overestimated and the OI budgets do not accurately represent Petitioner's FAP eligibility, potential benefit rate, or potential OI.

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 \$3,602.00 for the period May 2020 through August 2020.

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 of the alleged OI for the period May 2020 through August 2020 in the amount of \$3,602.00.

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-Wayne-49-Hearings
MDHHS-Recoupment-Hearings
BSC4-HearingDecisions
M. Holden
D. Sweeney
MOAHR

Petitioner-Via USPS:

