



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: January 25, 2021
MOAHR Docket No.: 20-007268
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 January 21, 2021. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Darcus Braswell, Recoupment Specialist.

ISSUE

Did the Department properly determine an agency error (AE) 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. On [REDACTED] 2019, the Department received Petitioner's Application for FAP benefits on which she indicated that her group of five did not have any medical expenses.
2. Beginning July 1, 2019, the Department issued \$762.00 in FAP benefits to Petitioner for a group size of five and budgeted \$479.00 in medical expenses each month.
3. In October 2020, the Department began issuing \$768.00 in FAP benefits to Petitioner based upon the same circumstances.
4. As a result of COVID-19 and the Department's efforts to combat its effects, as of March 26, 2020 and continuing through at least December 2020, the Department began issuing the maximum FAP benefit amount for the group size to each group that was not already receiving the maximum benefit rate.

5. On June 3, 2020, an OI Referral was created after a review of Petitioner's group's medical expenses.
6. On November 9, 2020, the Department issued a Notice of Overissuance to Petitioner notifying her that the Department had determined she had received an AE OI for the period July 1, 2019 through June 30, 2020 in the amount of \$1,569.00 because the Department had failed to properly budget the medical expense deduction.
7. On November 12, 2020, the Department received Petitioner's request for hearing disputing the Department's determination of an AE 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 \$1,569.00 for the period July 1, 2019 through June 30, 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.

The Department argues that the AE OI was created when it failed to remove budgeted medical expenses that Petitioner was no longer incurring. At the hearing, Petitioner conceded that she had not provided proof of any medical expenses to the Department. Furthermore, Petitioner's [REDACTED] 2019 Application for benefits indicates that she did not have any medical expenses at the time of Application. Despite Petitioner's assertions

on the Application, the Department budgeted \$479.00 as a medical expense deduction from July 2019 through June 2020. Therefore, the Department has properly determined that it made an error in budgeting the medical expense.

In support of its calculation of the OI, the Department has provided OI budgets for each month of the OI period. In reviewing each budget, the Department removed the medical expense deduction. The Department also added a telephone standard deduction as that had been improperly omitted in the original budgets for July 2019 through September 2019. From October 2019 through June 2020, the Department added the heat and utility standard deduction (H/U) instead of the telephone standard deduction to Petitioner's budget. No evidence was presented regarding this change, but because it is favorable to Petitioner, it is assumed to be correct. A review of each budget as well as the policy in place during each month shows that the Department has properly calculated Petitioner's benefit rate for each month as well as the OI in each month totaling \$1,569.00 for the period July 2019 through June 2020.

Despite the Department's accuracy in calculating the budget and its determination of an AE, the Department has not shown that it is entitled to recoupment of the OI for the period March 2020 through June 2020. During this period, the Department instituted a policy change for all FAP recipients so that "[a]ctive FAP groups who are not currently receiving the maximum benefit amount for their group size will receive a supplement to bring their benefit amount up to the maximum amount allowed for their group size." Economic Stability Administration Memorandum ESA 2020-15, *COVID-19 FAP Response Emergency Food Assistance Allotment* (March 26, 2020). This policy was set in place on March 26, 2020 and after numerous updates and revisions to the policy was extended through at least December 2020 in an effort to combat the effects of COVID-19. ESA 2020-15, (December 11, 2020). Though questioned, the Department provided no authority through policy, policy memorandum, federal regulation, law, or other item which would support the Department's assertion that it may recoup an alleged OI after March 2020 especially given the memorandums cited here which authorize a full benefit rate to all FAP recipients. Therefore, given this policy that all FAP recipients and groups regardless of their personal economic circumstance were eligible for the full FAP benefit rate, the Department has not shown that Petitioner was overissued FAP benefits during the period March 2020 through June 2020 even after consideration of the Department's error. Under any circumstance, this policy change made Petitioner eligible for the full FAP benefit rate. The OI attributable to the period March 2020 through June 2020 is removed from the total OI. The reduced total AE OI is \$1,101.00.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

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 AE OI of FAP benefits in the amount of \$1,101.00.

The Department is ORDERED to reduce the OI to \$1,101.00 for the period July 2019 through June 2020, and initiate recoupment/collection procedures in accordance with Department policy.

AMTM/cc



Amanda M. T. Marler
Administrative Law Judge
for Elizabeth Hertel, 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
BSC4-HearingDecisions
D. Sweeney
M. Holden
MOAHR

Petitioner- Via USPS:

