



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: January 15, 2019
MAHS Docket No.: 18-012951
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 10, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Rebecca Webber, Recoupment Specialist.

ISSUE

Did the Department properly determine a client 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. On [REDACTED] 2017, Petitioner submitted an online application and completed an interview over the phone, reporting Supplemental Security Income (SSI) and child support income for her daughter (Daughter), but no employment income.
2. On December 8, 2017, Petitioner applied for an Unemployment Compensation Benefit (UCB), which was approved effective December 3, 2017, with the first payment issued on December 23, 2017.
3. On April 24, 2018, Petitioner began employment with PIC.
4. On May 11, 2018, Petitioner received her first paycheck from PIC.

5. On June 20, 2018, Petitioner began receiving Child Support payments for her son (Son).
6. On July 30, 2018, Petitioner submitted a completed Redetermination to the Department listing her employment from PIC but reported that she was not receiving any child support income at the time.
7. On August 17, 2018, the Department received a OI Referral.
8. On November 15, 2018, the Department issued a Notice of Overissuance to Petitioner indicating that she had received an OI of FAP benefits from February 2018 through August 2018 in the amount of \$[REDACTED] as a result of a client error because income had not been reported within ten days of the change.
9. On November 28, 2018, the Department received Petitioner's request for hearing disputing the determination of an 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 that she received an OI of FAP benefits as a result of her failure to report UCB benefits and employment income. At the hearing, Petitioner asserted that she attempted to report the income to her case worker on multiple occasions, but she did not provide a date upon which she communicated the information to her case worker or that she submitted proof of her income information.

The Department assessed an OI for the period February 2018 through August 2018, in the amount of \$[REDACTED] UCB income and employment income received by the client is considered in the calculation of a client's FAP eligibility and amount of benefits to be issued. BEM 500 (July 2017); BEM 501 (October 2018); BEM 503 (July 2017), p. 38; BEM 556 (July 2013), pp. 1-7.

An OI is created when a client group receives more benefits than it is entitled to receive. BAM 700 (January 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. Client Error OIs are not pursued if the estimated amount is less than \$250.00 per program. BAM 700, p. 9. Since Petitioner failed to provide any specific date upon which she provided either verbal or written communication to the Department of her employment income and the Department's records reflect no report of income, the OI was properly considered a client error.

To support its calculation of the OI, the Department presented OI budgets for the OI period. The OI period should be based upon the application of (i) the 10-day client reporting period, per BAM 105; (ii) the 10-day full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the 12-day full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715 (October 2017), p. 5. Since Petitioner received her first UCB payment on December 23, 2017, the Department properly began the OI period as of February 1, 2018. Petitioner received her first paycheck from Employer on May 11, 2018; therefore, her first employment income should be budgeted as of July 1, 2018, which the Department properly considered. Finally, Petitioner began receiving Child Support for Son on June 20, 2018; therefore, the first child support income for son was properly considered on August 1, 2018.

In each budget, the only items changed were related to the changed income. Policy provides that in calculating an OI, if improper budgeting of income caused the OI, the actual income for the past OI month is the amount that is used. BAM 705, p. 8. Based upon information provided by the Unemployment Insurance Agency to the Department, the Department entered Petitioner's unemployment benefit into each budget correctly. However, it should be noted that in January and February 2018, Petitioner received a reduced UCB benefit due to employment income that the Department did not consider in the OI budgets. This error or oversight results in a benefit to Petitioner of a lower overall OI. As a result, since the Department is limited in its receipt of an OI to the amount requested on the Notice of Overissuance, this decision will not correct the Department's error or oversight. In reviewing the Department's consideration of child support income and Daughter's Supplemental Security Income (SSI), the Department properly included each item in each month.

Pursuant to policy, non-categorically eligible, non-Senior/Disabled/Disabled Veteran (SDV) groups must have income below the gross income limit of \$4,100.00 and net income limit of \$2,050.00. BEM 550 (January 2017), p. 1; RFT 250 (October 2017), p. 1. The gross income limit under column D is applied because all applicants are eligible for the Domestic Violence Prevention Services (DVPS). BEM 213 (January 2018), pp. 1-2.

In February 2018, Petitioner's gross income was \$ [REDACTED] and net income was \$ [REDACTED]. Therefore, she met both the gross and net income tests; and her corrected benefit rate was \$ [REDACTED]. Petitioner previously received a benefit of \$ [REDACTED] therefore, she had an OI of \$ [REDACTED].

In March 2018, Petitioner had gross income of \$ [REDACTED] and net income of \$ [REDACTED]. Again, she met both the gross and net income tests; and her corrected benefit rate was \$ [REDACTED]. Petitioner previously received \$ [REDACTED] therefore, her OI was \$ [REDACTED].

In April 2018, Petitioner had gross income of \$ [REDACTED] which is under the gross income limit. The Department did not calculate Petitioner's net income. In addition, the Department did not consider a heat-and-utility standard (H/U) deduction as part of Petitioner's Excess Shelter Deduction. The H/U was considered February and March 2018, as well as May and June 2018. It is unlikely that Petitioner failed to have a heat-and-utility expense for only one month. Therefore, the Department did not properly calculate Petitioner's benefit rate or OI for April 2018. The OI for April 2018 is removed from the total OI.

In May 2018, Petitioner had gross income of \$ [REDACTED] and net income of \$ [REDACTED] both of which were under the respective income limits. As a result, Petitioner was entitled to a corrected benefit rate of \$ [REDACTED]. Petitioner previously received a benefit issuance of \$ [REDACTED] therefore, she received an OI of \$ [REDACTED].

In June 2018, Petitioner had a gross income of \$ [REDACTED] and net income of \$ [REDACTED]. Petitioner met both income tests; therefore, she was eligible for a corrected benefit rate of \$ [REDACTED]. Her previous benefit rate was \$ [REDACTED] thus, she was under-issued FAP benefits in the amount of \$ [REDACTED].

In July 2018, Petitioner had a gross income of \$ [REDACTED] which is under the gross income limit. As seen in April 2018, the net income limit was not calculated and the heat-and-utility standard was not considered as it had been in other months. Therefore, the OI for July 2018 is removed from the total OI.

Finally, in August 2018, Petitioner had gross income of \$ [REDACTED] which was greater than the gross income limit of \$ [REDACTED]. Therefore, Petitioner was not eligible for any benefit in this month and received an OI totaling \$ [REDACTED].

After consideration of each month, the Department has established a total OI of \$ [REDACTED].

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 acted in accordance with Department policy when it determined a Client Error OI in the amount of \$ [REDACTED].

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the determination of a Client Error OI and **REVERSED IN PART** with respect to the amount of the OI.

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. Reduce the amount of the OI for the period February 2018 through August 2018 to \$ [REDACTED]
2. The Department may begin recoupment or collections in the amount of \$ [REDACTED] pursuant to Department policy.



AMTM/

Amanda M. T. Marler
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS Department Rep.

MDHHS-Recoupment

DHHS

Pam Assemany
MDHHS-StClair-Hearings

Petitioner

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[REDACTED] MI [REDACTED]

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