



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 15, 2019
MAHS Docket No.: 18-012988
Agency No.: ██████████
Petitioner: ██████████

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 14, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Kimberly Reed, Lead Worker, and Margaret Watkins, Recoupment Specialist.

ISSUE

Did the Department properly determine an Agency Error overissuance (OI) of Food Assistance Program (FAP) benefits to Petitioner?

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 ██████████, 2015, Petitioner submitted an application for FAP benefits listing herself, her husband, and her son as group members with an income of \$██████████ in Supplemental Security Income (SSI) for her husband.
2. On October 26, 2015, the Department issued a Notice of Case Action to Petitioner informing her that she was approved for \$██████████ for October 22, 2015, through October 31, 2015, and \$██████████ per month for November 2015, ongoing based upon household unearned income of \$██████████

3. For the period February 2016 through August 2016, Petitioner was budgeted \$ [REDACTED] in unearned income.
4. On April 4, 2016, the Department received a Medical Assistance (MA) Program Redetermination on which Petitioner indicated that no one in the household had income.
5. On April 13, 2016, the Department completed a Wage Match which showed that Petitioner's son was employed at [REDACTED] with quarterly earnings of \$ [REDACTED].
6. On April 27, 2018, an OI Referral was created for the FAP for the period September 2015 through September 2016.
7. On May 2, 2018, the OI Referral was received by the Recoupment Specialist.
8. On August 21, 2018, the Department requested information from the Social Security Administration (SSA) regarding Petitioner's husband's Supplemental Security Income (SSI) benefit.
9. On August 30, 2018, the Department received a response from the SSA verifying that Petitioner's Husband received \$ [REDACTED] in SSI payments from January 2016 through December 2018 and provided a breakdown of the payments made in each month (\$ [REDACTED] for each month in 2016, \$ [REDACTED] for each month in 2017, and \$ [REDACTED] for each month in 2018).
10. On October 30, 2018, the Department reviewed a Work Number Report for Petitioner's son's employment showing wages during the relevant period in this case.
11. On November 8, 2018, the Department issued a Notice of Overissuance to Petitioner informing her that the Department had determined that she received a FAP OI in the amount of \$ [REDACTED] for the period of February 2016 through August 2016 as a result of an Agency Error because the Department failed to budget unearned income for Petitioner's husband correctly.

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 asserted and Petitioner disputed a finding of an Agency Error OI in the amount of \$ [REDACTED] for the period from February 2016 through August 2016. 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 (January 2016), 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 \$ [REDACTED] per program. BAM 700, p. 9. In addition, once an OI is suspected, the case worker must submit an OI Referral to the Recoupment Specialist within 60 days. BAM 700, p. 10. Next, the Recoupment Specialist has 90 days from the date of the referral to obtain all evidence, calculate an OI amount, refer for an Intentional Program Violation (IPV), and issue a Notice of OI. BAM 700, p. 12.

The Department discovered unreported income by Petitioner for her son on or about April 13, 2016, but an OI Referral was not made until more than two years later. Ordinarily at this point, the review of the OI would end because the Department failed to follow Department procedures pursuant to policy. But in this case, the Department argued an Agency Error in failing to properly budget Petitioner's Husband's SSI income. This error on the part of the Agency was not discovered until August 30, 2018, when the Department received confirmation of Husband's SSI benefit from the SSA. Therefore, when the Department issued the Notice of OI in November 2018, the Department had complied with policy in completing the review and issuing notice to Petitioner within 90 days of the Recoupment Specialist becoming aware of the error.

To support its calculation of the OI, the Department presented OI budgets for the OI period. In each budget, the only items changed were related to household member's income (Husband's SSI and Son's wages). 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 for the hearing, the Department entered Son's employment income into each budget correctly; however, the Department improperly considered Husband's SSI benefit. The verification from SSA shows (and also as noted on Petitioner's original application for benefits) that Husband had a benefit of \$ [REDACTED] per month whereas the Department consistently budgeted \$ [REDACTED] per month in calculating the OI. While this creates a problem in reviewing the budgets, ultimately the Department's error does not affect the outcome of the Department's decision in most of the months of the OI period because Petitioner's group's net income was still greater than the Net Income Limit of \$1,675.00 for a group size of three. RFT 250 (October 2015), p. 1; BEM 550 (October 2015), p. 1. In any month where Petitioner's group had income greater than the net income limit, the

group was ineligible for FAP benefits. *Id.* The only months affected by the Department's error are June and July 2016. In these months, the net income as previously calculated both before and after consideration of the Department's error was below the net income limit. Therefore, after review of the Department's error, Petitioner's group would be eligible for a greater benefit than calculated by the Department in the OI budgets and would owe a lesser OI. Since these months were affected by the Department's error, the Department's calculated OI for these months will be removed from the total OI.

Therefore, the Department has established that Petitioner received an OI of FAP benefits in the amount 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 calculated the OI for February 2016 through May 2016, and August 2016; but failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the OI for June and July 2016.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the OI as calculated for February 2016 through May 2016, and August 2016 and **REVERSED IN PART** with respect to the OI as calculated for June and July 2016.

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 total OI for February 2016 through August 2016 to \$ [REDACTED]
2. Begin recoupment or collection of the OI for the relevant period.



AMTM/

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 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

Kimberly Reed
MDHHS-Montcalm-Hearings

DHHS Department Rep.

MDHHS-Recoupment

Petitioner

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MAHS