



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: June 13, 2019
MOAHR Docket No.: 19-004981
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 June 12, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Tamara Jackson, Eligibility Specialist, and Toni Grimes, Recoupment Specialist.

ISSUE

Did the Department properly determine a client error overissuance (OI) of the Food Assistance Program (FAP) received by 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 February 2, 2016, the Department received Petitioner's completed Redetermination listing herself and seven other people in the household, that she was pregnant and due September 12, 2016, and that she was employed with ██████████ (Employer 1).
2. On March 15, 2016, the Department issued a Notice of Case Action to Petitioner informing her that she was approved for \$██████████ in FAP benefits effective March 1, 2016, for a group size of six based upon \$██████████ in earned income, \$494.00 in unearned income, \$225.00 standard deduction, \$1,175.00 per month in housing costs, \$539.00 for the Heat and Utility Standard (H/U), and finally that she

was a simplified reporter who was only required to report changes if her household income exceeded \$3,529.00 per month.

3. On June 17, 2016, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefit would decrease to \$ [REDACTED] per month effective July 1, 2016 for a group size of six based upon \$1,515.00 in earned income, \$494.00 in unearned income, \$220.00 for the standard deduction, \$1,175.00 for housing costs, the \$539.00 H/U, and again the requirement to only report if her household income exceeded \$3,529.00.
4. On June 29, 2016, the Department received a completed Redetermination from Petitioner listing five other members of her household, that Petitioner was pregnant and due September 6, 2016, and that Petitioner was employed with Employer 1.
5. On August 2, 2016, the Department received a copy of Petitioner's paystub from Employer 1 for pay date July 22, 2016.
6. On the same day, the Department also received a Semi-Annual Contact Report from Petitioner listing six household members, indicating that household income had not changed by more than \$100.00 from the previously budgeted \$1,515.00 per month, and that no one had started or stopped employment.
7. On August 4, 2016, the Department completed a Consolidated Income Inquiry to determine household child support income.
8. On the same day, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefits were approved beginning September 1, 2016, in the amount of \$ [REDACTED] per month based upon a group size of six, \$1,727.00 in earned income, \$336.00 in unearned income, a \$220.00 standard deduction, \$1,175.00 for housing costs, and \$539.00 H/U in addition to the requirement to report changes in household income greater than \$3,529.00 per month.
9. On September 2, 2016, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefits were increased to \$ [REDACTED] per month for a group size of seven, that all other considerations for income and expenses remained the same, and she needed to report changes in income greater than \$3,980.00 per month.
10. On January 22, 2017, the Department ran a Wage Match for Petitioner's fiancé's income showing that he had employment from two sources at different periods, [REDACTED] (Employer 2) for the third quarter 2016 in the amount of \$ [REDACTED], and [REDACTED] (Employer 3) in the third quarter of 2016 in the amount of \$ [REDACTED].

11. Sometime in March 2017 or thereafter, the Department completed a Work Number Report for Petitioner's employment at Employer 1 showing payments from Employer 1 through March 3, 2017.
12. On April 12, 2018, the Department received an Employee Pay Summary from Employer 3 for Petitioner's fiancé for the period June 15, 2016 through July 28, 2016.
13. On April 13, 2018, the Department created an OI Referral.
14. On April 19, 2019, the Department completed an IG-011 Employee Wage History by Recipient ID inquiry to determine Petitioner's and her fiancé's earnings reported quarterly by his employers
15. On May 6, 2019, the Department received a completed Earnings Request form from Employer 2 for Petitioner's fiancé in addition to W-2 forms from 2017 and 2018, as well as paystubs from 2019.
16. On May 7, 2019, the Department issued a Notice of Overissuance to Petitioner informing her that the Department had determined she had received a Client Error OI from August 1, 2016 through February 28, 2017, in the amount of \$3,913.00 because they failed to report income exceeding the simplified reporting limit for Petitioner's fiancé at Employer 2 and Petitioner at Employer 1.
17. On May 16, 2019, the Department received Petitioner's request for hearing disputing the Department's calculation and determination of a client 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 a client error OI of FAP benefits based upon her failure to report changes in household income. An OI is created when the Department issues more benefits to a client group than it is entitled to receive. BAM 700 (January 2016), 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. When the Department determines that there is an Agency Error OI, the Department may only establish a claim for an OI beginning the first month the benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the RS, whichever 12-month period is later. BAM 705, p. 5.

The Department believes that this was a Client Error OI because Petitioner submitted a Semi-Annual Contact Report indicating that there had been no changes in household income of more than \$100.00. Petitioner indicates that she attempted to report changes to her caseworker, but that her caseworker was unresponsive. The Semi-Annual Contact Report was submitted to the Department on August 2, 2016; and it does in fact say that there are no changes in household income. In her June 2016 Redetermination, Petitioner indicated that the only source of income was from her employment at Employer 1. Through its investigations, the Department discovered that Petitioner's fiancé, a household member, had been employed with Employer 3, a staffing agency since the second quarter of 2016. What likely happened is that in the third quarter of 2016, he was hired directly at his assignment (Employer 2) from Employer 3. Information from Employer 2 shows that Petitioner's fiancé began his employment with Employer 2 on August 29, 2016, and received his first paycheck from Employer 2 on September 9, 2016. Prior to this date, he would have been receiving a paycheck from Employer 3, which explains Petitioner's confusion as to Employer 3 at the hearing. In any case, Petitioner did not report her fiancé's employment at the time of Redetermination or at the time of the Semi-Annual Contact Report. Petitioner credibly testified that she attempted to report his employment, end her employment, and report the birth of her child with her child's new Social Security number, but that she experienced significant difficulties communicating with her caseworker. Even though Petitioner had difficulties communicating with the caseworker, she still was required to report her fiancé's income on the Redetermination, on the Semi-Annual Contact Report, or within 10 days of his first paycheck from any employer including Employer 3 in the second quarter of 2016. BAM 210 (July 2016); BAM 105 (April 2016), p. 11. She did not report his income on any of these items. Therefore, the Department's determination of a Client Error OI is in accordance with policy.

To support its calculation of an OI, the Department submitted OI budgets for each month of the OI period from August 2016 through February 2017. In each budget, the Department included both Petitioner's employment from Employer 1 and her fiancé's employment from Employer 2. Petitioner argues that she attempted to report the end of her employment to her caseworker at the same time she reported the birth of her son, her fiancé's employment, and her son's new Social Security number. But again, the caseworker was unresponsive. Petitioner's statements are supported by the Department's Case Comments. The comments show that Respondent reported the birth of her child on September 2, 2016. From there, the Department included her son in the FAP group effective September 2016. However, the Case Comments also show

that the Department did not have proof of her son's Social Security number until at least August 2017. Petitioner credibly testified that she had provided all necessary documentation, but the information was either lost or the caseworker failed to process it. Then in September 2017, Petitioner spoke with her caseworker and reminded the caseworker that she had not worked since the birth of her son in August 2016. It should also be noted that in this process Petitioner's caseworker changed as well as her local office. If the Department did not have proof of her son's Social Security number, the Department never should have included him in the FAP group. BEM 223 (July 2014). Yet the Department included him in the FAP group as of September 2016; and none of the Department staff raised any concerns until July 2017. Since the Department had obvious communication errors and processing errors in Petitioner's case, and Petitioner has credibly explained the circumstances of her employment after the birth of her son, the Department should not have considered Petitioner's employment income in its calculation of the OI.

Even if Petitioner's employment income is removed from the FAP budget calculation, her fiancé's income is still significantly greater than the simplified reporting limit and gross income limit for Petitioner's group size which was \$3,529.00 as listed on the Notice of Case Action dated August 4, 2016 or \$3,980.00 based on the Notice of Case Action dated September 2, 2016. RFT 250 (October 2015 and October 2016), p. 1. Beginning September 2016, Petitioner's fiancé had earned income of \$[REDACTED] per month. Therefore, from September 2016 through February 2017, Petitioner was ineligible for FAP benefits due to excess gross income. BEM 550 (October 2015), p. 1.

It should be noted that for August 2016, the Department calculated an underissuance of \$63.00. Due to the start date of Petitioner's fiancé's employment with Employer 2, the Department did not consider his income in August 2016. However, the Department did not offset its OI calculation after consideration of each month in the OI period. No evidence was presented that Petitioner was ever supplemented this benefit. Since Petitioner was entitled to the benefit, the total OI should be offset by the \$63.00 underissuance for a new total OI of \$3,850.00.

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 acted in accordance with Department policy when it determined a client error OI but erred in its calculation of the total OI.

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. Reduce the total OI from August 2016 through February 2017 to \$3,850.00; and,
2. Begin recoupment or collections of the OI for the period August 2016 through February 2017 in accordance with Department policy.



AMTM/jaf

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

DHHS

Brenda Buhl
MDHHS-Lapeer-Hearings

DHHS Department Rep.

MDHHS-Recoupment

Petitioner

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

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M Holden
D Sweeney