



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 5, 2019
MOAHR Docket No.: 19-006904
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 July 31, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED] Assistance Payments Supervisor, and [REDACTED] Recoupment Specialist.

ISSUE

Did the Department properly determine 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. On July 9, 2018, the Department received Petitioner's completed Semi-Annual Contact Report on which she disclosed that she was working for [REDACTED] (Employer 1) effective June 27, 2018 and was paid on a bi-weekly basis.
2. On January 22, 2019, the Department received and processed Petitioner's completed Redetermination on which she indicated that she had employment with Employer 1.

3. On February 11, 2019, an interview was completed, and Petitioner's case worker realized that the Semi-Annual Contact Report from July 2018 was never processed.
4. On May 24, 2019, the Department created an OI Referral for the period September 2018 through December 2018.
5. On June 13, 2019, the Department issued a Notice of Overissuance to Petitioner informing her that the Department had calculated an Agency Error OI of [REDACTED] for the period September 2018 to February 2019 because of the Agency's error in failing to process her Semi-Annual Contact Report and associated verifications.
6. On June 25, 2019, the Department received Petitioner's request for hearing disputing its 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 determination of an Agency Error OI in the amount of \$599.00 for the period from September 2018 through February 2019. An OI is created when the Department issues more benefits to a client group 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. 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.

In July 2018, Respondent reported a change in her employment income. The Department did not process the change until February 2019. As a result, the Department did not budget Petitioner's new employment income and did not remove her

old employment income. The failure to process these changes resulted in an OI caused by an Agency Error.

In support of its calculation of the OI, the Department presented OI budgets for each month of the OI period in addition to a Work Number Report for Employer 1 and Earnings Request response from Petitioner's former employer [REDACTED] (Employer 2). The Work Number Report is made available by [REDACTED] on behalf of employers who opt into the service. It provides information related to a person's employment to third parties such as the Department. The records show that Petitioner ended her employment with Employer 2 on June 25, 2018. The records also show that Petitioner began her employment with Employer 1 on June 27, 2018.

In September 2018 OI budget, the Department failed to consider the Net Income Limit of [REDACTED]. RFT 250 (October 2017), p. 1; BEM 550 (January 2017), p. 1. As a result, the Department provided Petitioner a FAP benefit rate of [REDACTED] per month even though Petitioner's Net Income of [REDACTED] was greater than the limit. Since the Department cannot be awarded a greater OI than it originally requested and because this error results in a benefit to Petitioner, this error will not be corrected for purposes of this decision.

In the October and December 2018 OI budgets, the Department failed to provide Petitioner with the 20% earned income deduction and failed to consider the Net Income Limit. The 20% earned income deduction is provided to all clients with earned income that properly report the income. BEM 556 (April 2018), p. 1. Since Petitioner reported her new income on the Semi-Annual Contact Report on July 9, 2018 and her first paycheck was received July 12, 2018, Petitioner timely reported the income and should be provided the benefit of the 20% deduction. Effective October 1, 2018, the Net Income Limit was \$[REDACTED]. RFT 250 (October 2018), p. 1. Even though the Department failed to provide Petitioner with the 20% earned income deduction and her net income was over the limit even after its consideration, the Department again provided Petitioner with a [REDACTED] FAP benefit rate. As discussed above, this error will not be corrected for purposes of this decision.

In November 2018, the Department also failed to consider the 20% earned income deduction which would have made Petitioner's gross income less than the Gross Income Limit of [REDACTED] per month. RFT 250, p. 1. However, Petitioner's Net Income even after consideration of the 20% deduction and all other applicable deductions was still greater than the Net Income Limit of [REDACTED]. Therefore, despite the Department's error, the Department properly determined that Petitioner was entitled to [REDACTED] FAP benefit for November 2018.

Finally, in January and February 2019, the Department again failed to provide the 20% earned income deduction. However, even after consideration of the 20% earned income deduction, Petitioner was still only eligible for [REDACTED] in benefits for each month. RFT 260 (October 2018). Therefore, the Department's error does not affect the outcome in this case.

After review of all of the evidence, the Department has established an Agency Error OI in the amount of [REDACTED].

DECISION AND ORDER

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

The Department may begin recoupment or collections of the FAP OI.



AM/

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 Department Rep.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CC: [REDACTED]