



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 27, 2019
MOAHR Docket No.: 19-007973
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 August 26, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED], Recoupment Specialist, and [REDACTED] Hearings Coordinator.

ISSUE

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

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 May 12, 2015, the Department received Petitioner's completed Redetermination for the FAP on which she listed her employment with [REDACTED] (Employer).
2. On May 21, 2015, during a telephone interview, Petitioner and Department discussed Petitioner's employment with Employer.

3. On May 27, 2015, the Department issued a Notice of Case Action to Petitioner informing her that she was eligible for a prorated benefit of \$ [REDACTED] for the remainder of the month of May 2015 and then [REDACTED] per month beginning June 2015 each based upon a group size of five, [REDACTED] earned income, [REDACTED] self-employment income, [REDACTED] in unearned income, a [REDACTED] standard deduction, [REDACTED] in medical expenses, [REDACTED] in housing costs, and finally, a [REDACTED] heat and utility standard deduction (H/U).
4. On August 20, 2015, the Department created an OI Referral based upon the discovery that Petitioner's employment income had not been budgeted.
5. On April 24, 2019, after a period of investigation and gathering of information, the Department issued a Notice of Overissuance to Petitioner informing her that from May 1, 2015 through August 31, 2015, she received an OI totaling [REDACTED] based upon the Agency's Error in failing to properly budget her reported income from the May 2015 Redetermination.
6. On June 24, 2019, the Department received Petitioner's request for hearing disputing the Department's determination of an Agency 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, Petitioner disputes the Department's determination of an Agency Error OI in the amount of [REDACTED] for the period May 1, 2015 through August 31, 2015. An OI is created when the Department issues more benefits to a client group than it is entitled to receive. BAM 700 (May 2014), 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 (July 2014), 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 May 2015, Petitioner reported on her Redetermination that she had begun employment with Employer. The Department did not recognize or process the change until August 2015 despite having discussed the matter with Petitioner at her interview. As a result, the Department did not budget Petitioner's new 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 wage records from Employer. The records show that Petitioner was working for Employer from at least May 2015 through at least September 2015. In reviewing the budgets, the Department appears to have properly translated Petitioner's income into the appropriate budget. However, the Department entered Petitioner's income in the unreported income section versus the reported earned income section. This distinction created an error in the Department's calculation of the OI. When earned income is reported, the client is eligible for a 20% earned income deduction pursuant to policy. BEM 556 (July 2013), p. 3. The earned income deduction is only excluded from consideration when a client fails to report their earned income. As is seen by Petitioner's Redetermination and subsequent interview, Petitioner disclosed her earned income to the Department. Therefore, she was eligible for the earned income deduction and the Department did not properly classify her income. Since the Department failed to properly classify her income and failed to provide her the appropriate earned income deduction for each month of the OI period, the Department has not properly calculated any of the budgets in the OI period.

It should also be noted that the Department improperly removed the H/U standard deduction for May, July, and August 2015 as well as Petitioner's medical expense deduction for each month of the OI period. In the original Notice of Case Action from May 2015, the Department noted that Petitioner was eligible for a medical expense deduction of [REDACTED] in addition to the H/U standard deduction of \$553.00. No evidence was presented at the hearing that there was an error in providing Petitioner with either deduction at the time of the original calculation. Therefore, removal of each deduction from the calculation of the OI was an error in the Department's OI calculation.

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 did not act in accordance with Department policy when it calculated an Agency Error OI for the period May 2015 through August 2015 in the amount of [REDACTED].

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. Delete and cease recoupment of the alleged OI for the period May 2015 through August 2015 in the amount of [REDACTED]



AM/tm

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

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

DHHS Department Rep.

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

Petitioner

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

CC:

[REDACTED]
[REDACTED]