GRETCHEN WHITMER GOVERNOR

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

ORLENE HAWKS DIRECTOR



Date Mailed: December 17, 2019 MOAHR Docket No.: 19-012252

Agency No.: Petitioner:

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **HEARING DECISION**

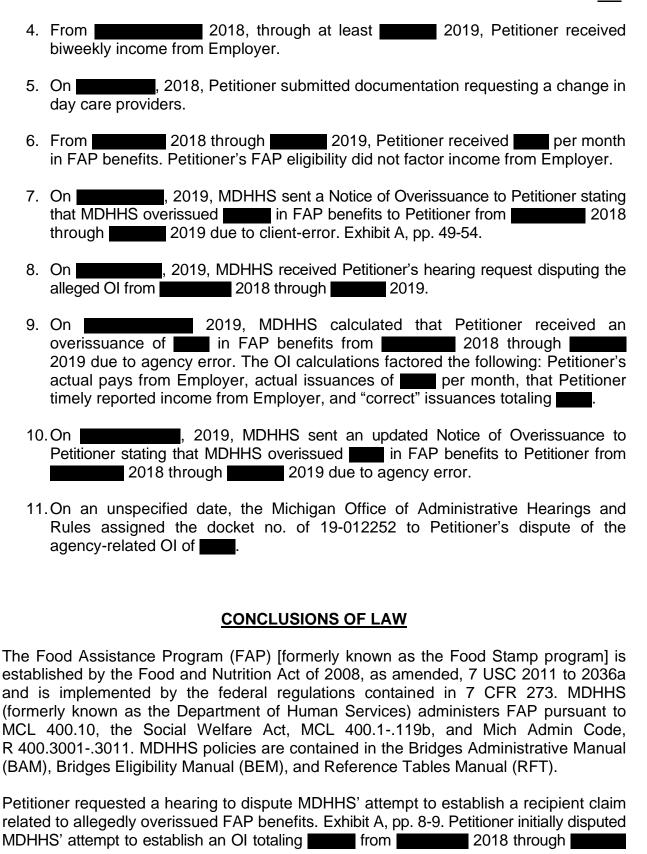
Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a 3-way telephone hearing was held on December 11, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Julie Barr, recoupment specialist.

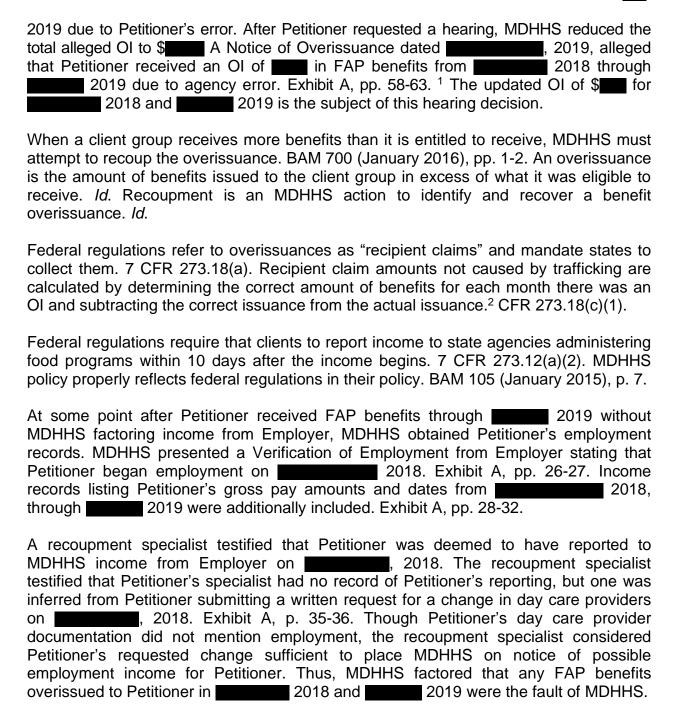
### **ISSUE**

The issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner from 2018 through 2019.

#### FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:





<sup>&</sup>lt;sup>2</sup> Additionally, MDHHS is to subtract any benefits that were expunged (i.e. unused benefits which eventually expire from non-use). MDHHS presented a history of Respondent's FAP expenditures which verified that Respondent spent all FAP benefits issued during the alleged OI period. Exhibit A, pp. 50-65. Thus, expungement is not a factor in calculating the OI amount.

MDHHS presented FAP-OI budgets from 2018 through 2019 which demonstrated how an OI was calculated. Exhibit A, pp. 43-47. Each month's FAP-OI budget factored Respondent's actual income from Employer during each benefit month. Unrebutted MDHHS testimony stated that no other eligibility factors were changed from budgets corresponding to Respondent's FAP issuances during the OI period. The budgets factored that Petitioner's actual issuances totaled during the OI period; Petitioner's actual issuances were properly taken from Petitioner's issuance history. Exhibit A, pp. 19. The budgets credited Petitioner with a 20% employment income credit for timely reporting income. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of was properly calculated.

MDHHS delayed beginning an overissuance period until 2018 despite Petitioner's earlier employment with Employer. The delay is compliant with policy which requires beginning the OI period for client-errors in the first full benefit month after allowing time for the client to report changes (see BAM 105), MDHHS to process changes (see BAM 220), and the full negative action suspense period (see *Id.*). BAM 715 (October 2017), p. 5.

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). MDHHS pursues FAP-related agency errors when they exceed \$250. BAM 705 (October 2018), p. 1.

Petitioner's primary contention was that she should not be held accountable for repayment of overissued FAP benefits when MDHHS was at fault. MDHHS acknowledged that the OI was its own fault and calculated the OI accordingly. As the OI caused by MDHHS' error exceeded \$250, MDHHS may establish a recipient claim. Based on the evidence, MDHHS established a recipient claim against Petitioner for in FAP benefits overissued to Petitioner from 2018 through 2019.

<sup>&</sup>lt;sup>3</sup> For agency-caused errors, the same delay is required except for 10 days for a client to report changes. Application of the delay for an agency-caused error would not change the analysis in the present case.

## **DECISION AND ORDER**

The administrative law judge, based upo	n the above findings of f	act and conclusions of
law, finds that MDHHS established a	a recipient claim of	for FAP benefits
overissued to Petitioner from	2018 through	2019 due to agency-
error. The MDHHS request to establish	a recipient claim of	against Petitioner is
APPROVED.	·	_

CG/tm

Christian Gardocki
Administrative Law Judge
for Robert Gordon, Director

Willia Dardock

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

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Petitioner



cc: FAP: M. Holden; D. Sweeney Menominee AP Specialist (1)