



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
MI [REDACTED]

Date Mailed: January 28, 2020  
MOAHR Docket No.: 19-013231  
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 January 22, 2020 from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Patrick Lynaugh, Recoupment Specialist, and Tonya Turkleson, Hearings Facilitator.

### **ISSUE**

Did the Department properly determine a client 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. Petitioner began employment with [REDACTED] (Employer 1) effective May 6, 2015.
2. On September 28, 2016, after completing the Redetermination process, the Department issued a Notice of Case Action to Petitioner informing her that effective October 1, 2016, her FAP benefit was approved based upon \$1,491.00 in budgeted earned income and that she was considered a simplified reporter who should report changes in gross income greater than \$ [REDACTED].

3. Petitioner began employment with [REDACTED] (Employer 2) effective January 1, 2017.
4. Employer 1 and Employer 2 are housed in the same building and essentially operate as the same business but under different names for different services; Petitioner continued to work for Employer 1 while working for Employer 2.
5. On February 21, 2017, the Department received a completed Semi-Annual Contact Report from Petitioner indicating that there had been a change in address, rent, and child support income, but no change in earned income greater than \$100.00 from the previously budgeted \$1,491.00.
6. On April 30, 2018, the Department completed a Wage Match and discovered Petitioner's employment with Employer 1 and Employer 2.
7. On May 11, 2018, the Department received the completed Wage Match forms for both employers, signed by the same person, on the same day, at the same address for both employers, and neither indicating that there was ever an end to her employment.
8. On May 23, 2018, an OI Referral was created.
9. On November 13, 2019, the Department issued a Notice of Overissuance to Petitioner informing her that the Department had determined she received a client error OI for under reporting her income for the period December 2016 and March through May 2017 in the amount of \$ [REDACTED].
10. On December 12, 2019, the Department received Petitioner's request for hearing disputing the determination of a client error OI, asserting that it was an agency error OI, that she had a discussion with her caseworker who acknowledged an error in failing to budget the second employer, and noting that she has previously requested that her address be updated on two occasions but still had not been updated.

### **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 assertion of a Client Error OI for the period December 2016 and March through May 2017 in the amount of \$1,071.00. Client error OIs exist when a client gives incorrect or incomplete information to the Department. BAM 715 (January 2016), p. 1. Agency error OIs are caused by incorrect actions, including delays or no action, by the Department. BAM 705 (January 2016), p. 1. The Department must attempt to recoup all FAP OIs greater than \$250.00. BAM 700 (January 2016), pp. 1, 10. Policy further provides that if upon a timely hearing request, an administrative hearing decision upholds the Department's actions, the client must repay the OI. BAM 700, p. 3. In agency error OI cases, the Department can only establish an OI for the period beginning the first month when the benefit issuance exceeds the amount allowed by policy, or the 12 months before the date the Overissuance was referred to the Recoupment Specialist, whichever 12-month period is later. BAM 705 (January 2016), p. 5. Federal Regulations also provide that in calculating a claim amount, the State agency must calculate a claim back to at least 12 months prior to when the Agency became aware of the overpayment, but may not include any amounts that occurred more than six years before the Agency became aware of the overpayment. 7 CFR 273.18(c)(1)(i).

Petitioner believes that this was a situation created by an agency error; the Department asserts that this was a client error. In support of her position, Petitioner asserts that she had reported both employers to her caseworker, that her caseworker had assumed that she had changed jobs and ended the employment with Employer 1 to begin the employment with Employer 2. In addition, confusion was created by the fact that Employer 1 and Employer 2 have the same address. The Department asserts that Petitioner's income was over the simplified reporting limit beginning October 2016 which Petitioner failed to report, in addition to the fact that Petitioner failed to report the start of employment with Employer 2 in January 2017 as well as the reoccurrence of income greater than the simplified reporting limit in March through May 2017. Petitioner's simplified reporting limit as noted on the September 2016 Notice of Case Action was \$2,184.00. Petitioner did not assert that she had reported income over the reporting limit, only that she had reported employment from Employer 2. However, Petitioner did not begin working for Employer 2 until January 2017; therefore, any income received prior to January 2017 would have been based solely upon Employer 1. Based upon a review of Petitioner's wages in December 2016, as indicated by the Wage Match, Petitioner had wages totaling \$[REDACTED]. Her income was well above the simplified reporting limit; the Department was correct in determining a client error OI for December 2016 because Petitioner failed to report income received about the simplified reporting limit.

Turning to the calculation of the OI for December 2016, the Department asserts that Petitioner received an OI equal to her benefit issuance for the month, \$272.00. As discussed above, Petitioner's gross income for December 2016 was \$[REDACTED]. In December 2016, the gross income limit for a group size of three based upon categorical

eligibility conferred by the Domestic Violence Prevention Services (DVPS) program was \$3,360.00. RFT 250 (October 2016), p. 1; BEM 213 (January 2016), p. 1. The Net Income Limit was \$1,680.00. RFT 250, p. 1; BEM 550 (October 2015), p. 1. The Department presented an OI budget for December 2016. In the OI budget, the Department considered Petitioner's previously budgeted \$1,491.00 earned income, \$272.00 in unearned income, the 20% earned income deduction for the reported income, and finally the portion of unreported income greater than the amount previously budgeted, \$[REDACTED] in unreported income. In addition, the Department considered the previously budgeted \$151.00 Standard Deduction, \$1,000.99 house expense, and \$526.00 Heat and Utility standard deduction. After consideration of each of these items, the Department properly calculated a Net Income of \$[REDACTED]. Petitioner's Net Income was greater than the Net Income Limit for her group size; therefore, she was ineligible for benefits in December 2016. Petitioner received an OI equal to the value of the benefit received or \$272.00.

Beginning January 2017, Petitioner asserts that she reported her income from Employer 2 but that due to a misunderstanding by her caseworker, the caseworker ended Employer 1 and started Employer 2 in the budget. Petitioner made this assertion in her request for hearing. The Department did not present Earned Income Budget-Summaries or Petitioner's Electronic Case File (showing all documents received by the Department during the relevant period) to show the history of when verifications were received and when one employer was budgeted versus another. These documents would have made clear whether or not Petitioner's assertions were accurate. Since the Department has the burden of proof to establish that they correctly determined a client error, and the Department has presented insufficient evidence to refute Petitioner's statements, the Department has not met its burden of proof in establishing that Petitioner committed a client error OI for March through May 2017. Therefore, any OI for March through May 2017 is attributable to an agency error going forward.

In March 2017 and April 2017, since the Department did not meet its burden of proof in establishing that the OI resulted from a client error rather than an agency error, the Department cannot recoup any alleged OI. As discussed above, in agency error cases, the Department is limited in its recoupment to the period beginning with the first month the benefit issuance exceeds the amount allowed by policy or to the 12-month period before the date the OI referral was made to a recoupment specialist, whichever 12-month period is later. BEM 705, p. 5. Since the OI Referral was made on May 23, 2018, the Department may only recoup agency error OI's dating back to May 2017. Therefore, the OI attributable to March and April 2017 is removed from the total OI.

Finally, in May 2017, because the Department failed to meet its burden that there was a client error OI as opposed to an agency error OI, the Department did not properly calculate the OI budget. In agency error OI cases, earned income which was not previously budgeted is eligible for the 20% earned income deduction. BAM 715 (January 2016), p. 8; BEM 556 (July 2013), p. 3.. Going through the determination of eligibility, Petitioner would have had a gross earned income of \$[REDACTED] and an earned

income deduction of \$587.00. She also had unearned income of \$125.00 and a Standard Deduction of \$151.00. Therefore, Petitioner's Adjusted Gross Income (AGI) should have been calculated as \$ [REDACTED]. BEM 556, p. 2-4. Next, Petitioner's housing expenses would be considered. Petitioner had a mortgage expense of \$1,000.00 and was responsible for the cost of her heat and utilities as noted by the Notice of Case Action and other budgets; therefore, she should have received the heat and utility standard deduction (H/U) of \$526.00 pursuant to policy. RFT 255 (October 2016), p. 1; BEM 556, pp. 4-5. Petitioner's mortgage and H/U would be added together and then reduced by 50% of Petitioner's AGI to calculate her Excess Shelter Deduction of \$365.00. BEM 556, pp. 4-5. Petitioner's Excess Shelter Deduction is then subtracted from her AGI for a total Net Income of \$1,957.00. BEM 556, p. 5. Petitioner's net income was greater than the Net Income Limit of \$1,680.00. Despite the Department's error/failure to meet its burden of proof for a client error, Petitioner was still not eligible for FAP benefits in May 2017 and received an OI equal to the value of the benefits issued to her or \$211.00.

Therefore, after a review of all of the evidence, the Department has met its burden of proof in establishing a total OI equal to \$483.00 for the period December 2016 through May 2017.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner had received a client error OI equal to \$1,071.00 for the period December 2016 through May 2017.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established an OI of FAP benefits in the amount of \$483.00.

The Department is ORDERED to reduce the OI to \$483.00 for the period December 2016 through May 2017, and initiate recoupment/collection procedures in accordance with Department policy.



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**Amanda M. T. Marler**  
Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

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**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**

Amy Assante  
MDHHS-CHS-Emmett-Hearings  
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MDHHS-Recoupment-Hearings

**Petitioner**

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