



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: January 29, 2021  
MOAHR Docket No.: 19-014163-RECON  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

**ORDER GRANTING REQUEST FOR RECONSIDERATION**  
**AND**  
**DECISION AND ORDER OF RECONSIDERATION**

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the request for rehearing and/or reconsideration by the Department of Health and Human Services (Department) of the Hearing Decision issued by the undersigned at the conclusion of the hearing conducted on [REDACTED] 2020, and mailed on [REDACTED] 2020, in the above-captioned matter.

In the Hearing Decision, it was found that although Petitioner, [REDACTED] received an agency error overissuance (OI) of Food Assistance Program (FAP) benefits in the amount of [REDACTED] for the month of [REDACTED] 2019, the Department was not entitled to recoupment of the OI, as it was below the [REDACTED] threshold identified in Department policy with respect to the recoupment of agency error OIs.

On or around October 7, 2020, the Department submitted a request for reconsideration and/or rehearing. The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application or services at issue and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. A rehearing is a full hearing which may be granted if the original hearing record is inadequate for purposes of judicial review or there is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision. BAM 600 (January 2020), p. 44. A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing and may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties is able to demonstrate that the Administrative Law Judge misapplied manual policy or law in the hearing decision, which led to the wrong decision; issued a

Hearing Decision with typographical errors, mathematical errors, or other obvious errors that affect the substantial rights of the petitioner; or failed to address other relevant issues in the hearing decision. BAM 600, p. 45.

In its request for reconsideration/rehearing, the Department alleged that the undersigned misapplied manual policy or law in the Hearing Decision, which led to the wrong decision. Specifically, the Department alleged that in issuing the Hearing Decision, the undersigned failed to consider 7 CFR 273.18(e)(2)(i). Because the Department alleges a misapplication of law or policy and has identified the policy at issue, a basis for reconsideration is established. Therefore, the Department's request for reconsideration is **GRANTED**.

The Decision and Order of Reconsideration follows a full review of the case file, all exhibits, the hearing record and applicable statutory and policy provisions.

## **DECISION AND ORDER OF RECONSIDERATION**

### **ISSUE**

Did the undersigned Administrative Law Judge (ALJ) err in concluding that the Department was not entitled to recoupment of a [REDACTED] agency error overissuance (OI) in FAP benefits from Petitioner for the month of [REDACTED] 2019?

### **FINDINGS OF FACT**

The undersigned, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] 2020, a hearing was held in the above captioned matter.
2. The Department alleged that due to agency error, Petitioner received an OI of FAP benefits in the amount of [REDACTED] for the period of June 1, 2019 through [REDACTED] 2019 due to the Department not timely requesting verification of shelter expenses and the FAP budget having an incorrect expense.
3. On [REDACTED] 2020, the undersigned issued a Hearing Decision in the matter, finding that although an agency error OI of [REDACTED] was established, the Department was not entitled to recoupment of the OI.
4. The Findings of Fact numbers 1 through 13 in the Hearing Decision are incorporated by reference.
5. On [REDACTED] 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Department's timely request for reconsideration, which is granted herein.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Reference Tables Manual (RFT), and 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, *et seq.*, and is implemented, in relevant part, by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 to R 400.3011.

In this case, the Department testified that a FAP Quality Control Review (QC Review) of Petitioner's FAP case was conducted and it was determined that Petitioner received an agency error caused OI of FAP benefits in the amount of [REDACTED] for the month of [REDACTED] 2019.

BAM 320 (Department Audits) authorizes the Department to conduct FAP Quality Control reviews to determine for active cases, if an eligibility decision and/or benefit amount for the sample month was correct, or for negative case reviews, if the denial or closure, was correct. The QC review findings of active cases determine the incidence and dollar amounts of errors. If an error case is received, the local office has ten workdays to submit the DHS-191, Response to Office of Quality Assurance Quality Control Review Error, and any supporting documentation. If a recoupment action is required, a copy of the DHS 4701, Overissuance Referral, must be included with the DHS 191. BAM 320 (July 2013), pp. 1-5.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. An OI may be discovered through a Quality Control audit. BAM 700 (October 2018), p. 1, 4. An agency error OI is caused by incorrect actions by the Department, including delayed or no action, which result in the client receiving more benefits than they were entitled to receive. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. Agency error OIs are not pursued if the estimated amount is less than [REDACTED] per program. BAM 700, pp. 4-6; BAM 705 (October 2018), p. 1-6.

At the hearing, the Department presented sufficient documentation to establish that Petitioner was issued [REDACTED] in FAP benefits for the month of [REDACTED] 2019 and that when the correct amount of her housing expense [REDACTED] was included in her FAP benefit calculation, she was eligible to receive [REDACTED] resulting in a FAP OI of [REDACTED], which the Department conceded was a result of agency error. The Department, relying on BAM 705, at p. 4, testified that all OIs, including those resulting from agency error, and regardless of amount are to be pursued for recoupment if the OI was discovered by the Office of Quality Assurance. However, because the Department failed to identify a Department policy that provided an exception to the [REDACTED] threshold amount for OI

cases discovered as a result of a QC review/audit, the undersigned concluded that the Department was not entitled to recoup the [REDACTED] agency error OI, as it was below the [REDACTED] threshold amount reflected in the Department's policy.

In its request for reconsideration, the Department alleged that the undersigned misapplied policy in failing to consider and apply the federal regulations, specifically, 7 CFR 273.18(e)(2)(i), which the Department asserted requires the State agency to establish and collect an overpayment discovered during a quality control review. The Department conceded that the MDHHS policy manuals BEM and BAM do not contain an exception to the [REDACTED] agency error threshold amount authorizing recoupment of all QC review overpayments and argued that upon discovery of the omission of this exception in Department policy, the Department issued a Memorandum as a supplement to current policy until the policy could be updated. A Memorandum dated [REDACTED] 2019 was included with the Department's request for reconsideration.

The Department, relying on what it identified to be an Administrative Notice 17-2017 dated April 20, 2014, argued that to comply with 7 CFR 273.18(e)(2)(i), the Administrative Notice clarified the requirements to establish and collect a claim on all overpayments discovered in a QC review regardless of the size of the overpayment. While the March 19, 2019 Memorandum referencing the Administrative Notice from April 20, 2014 was presented with the Department's request for reconsideration, neither the Memorandum nor the Administrative Notice were provided for the undersigned's review during the administrative hearing, despite being available to the Department. Furthermore, it is noted that only the March 19, 2019 Memorandum was provided with the request for reconsideration and the Department again failed to present the Administrative Notice for review.

Notwithstanding the Department's failure to present necessary documentation including the Administrative Notice and Memorandum for the undersigned's review during the hearing, a review of 7 CFR 273.18(e)(2)(i) and (ii) shows that, regardless of whether the Department has a cost-effectiveness plan or has adopted the federal threshold, it must pursue the collection of all overissuances discovered through a QC review. Under § (a)(2), the Department has an obligation to establish and collect such claims. Therefore, because the \$65 FAP OI in Petitioner's case was discovered under a QC review, the Department is required to pursue and collect the FAP OI despite the fact that it was due to agency error and was under the \$250 threshold for other overissuances.

Therefore, in accordance with 7 CFR 273.18(e)(2)(i), the Department has established that Petitioner was overissued [REDACTED] in FAP benefits for the month of [REDACTED] 2019, and because the OI was discovered as a result of a QC review/audit, the Department is entitled to recoupment of the agency error OI.


**DECISION AND ORDER**

Based on the above Findings of Fact and Conclusions of Law, Petitioner was overissued [REDACTED] in FAP benefits that the Department was entitled to recoup and/or collect.

Accordingly, the [REDACTED] 2020 Hearing Decision is **REVERSED**.

The Department is ORDERED to begin recoupment and/or collection of a [REDACTED] FAP overissuance from Petitioner, less any amounts already recouped and/or collected, in accordance with Department policy.

ZB/tlf

  
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**Zainab A. Baydoun**  
Administrative Law Judge  
for Elizabeth Hertel, 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

**Via Email:**

MDHHS-StClair-Hearings  
MDHHS-Recoupment  
MOAHR

**Petitioner – Via First-Class Mail:**

[REDACTED]  
[REDACTED] MI [REDACTED]