



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: November 25, 2020  
MOAHR Docket No.: 20-006063  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 hearing was held on November 19, 2020, via telephone conference line. Petitioner participated and was unrepresented. [REDACTED], Petitioner's fiancé (hereinafter, "Fiancé"), testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Tracy Upshaw, recoupment specialist.

### **ISSUE**

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

### **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 [REDACTED], 2019, Petitioner applied for FAP benefits. Petitioner reported a household that included Fiancé. Petitioner reported recently stopped employment for Fiancé with [REDACTED] (hereinafter, "Employer1").
2. From December 27, 2019, through at least May 2020, Fiancé received biweekly income from [REDACTED] (hereinafter, "Employer2").
3. From February 2020 through May 2020, Petitioner received a total of \$2,036 in FAP benefits. Petitioner's FAP eligibility did not factor income from Employer2.
4. As of May 2020, Petitioner had not reported to MDHHS income from Employer2.

5. On August 14, 2020, Petitioner's case was referred to a recoupment specialist. Exhibit A, p. 42.
6. On an unspecified date, MDHHS calculated that Petitioner received an overissuance of \$1,060 in FAP benefits from February 2020 through May 2020 due to client-error. The overissuance (OI) calculation factored the following: Fiancé's actual pays from Employer2, FAP issuances totaling \$2,036, and that Petitioner failed to timely report income from Employer2.
7. On August 25, 2020, MDHHS sent a Notice of Overissuance to Petitioner stating that Petitioner received \$1,060 in over-issued FAP benefits from February 2020 through May 2020 due to client-error.
8. On September 16, 2020, Petitioner requested a hearing to dispute the alleged overissuance.

### **CONCLUSIONS OF LAW**

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute MDHHS's attempt to establish a recipient claim related to allegedly overissued FAP benefits. Exhibit A, pp. 3-4. A Notice of Overissuance dated, stated that Petitioner received \$1,060 in overissued FAP benefits from February 2020 through May 2020 due to client-error. Exhibit A, pp. 5-10.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), pp. 1-2. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.*

Federal regulations refer to overissuances as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a). Recipient claim amounts not caused by trafficking are calculated by determining the correct amount of benefits for each month there was an OI and subtracting the correct issuance from the actual issuance.<sup>1</sup> CFR 273.18(c)(1).

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<sup>1</sup> Additionally, MDHHS is to subtract any benefits that were expunged (i.e. unused benefits which eventually expire from non-use). There was no evidence that any of the benefits issued to Petitioner were expunged.

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). MDHHS may pursue FAP-related client errors when they exceed \$250. BAM 715 (October 2017), p. 7.

MDHHS specifically alleged that Petitioner received an OI of FAP benefits by failing to timely report income from Employer2. To establish an OI, MDHHS must establish that Petitioner had an obligation to report income from Employer2.

Not all clients are required to report changes in income. Certified change reporting households are required to report to MDHHS various changes in household circumstances. Changes required to be reported include the starting of employment income. 7 CFR 273.12(a). Change reporters differ from simplified reporters who are required to report only when the group's actual gross monthly income exceeds the simplified reporting income limit for their group size; no other reporting is required. BAM 200 (December 2013) p. 1. Simplified reporters are groups with countable earnings. *Id.*, p. 1.

Petitioner's application dated [REDACTED] 2019, requesting FAP benefits reported recently stopped employment income for Employer1, but no ongoing employment income. Exhibit A, pp. 35-41. A reporting of no ongoing employment income as of December 27, 2019 is consistent with being a change reporter as of January 2020. During the hearing, Petitioner did not allege that she was a simplified reporter. Given the evidence, Petitioner was a change reporter and obligated to report the start of income from Employer2.

MDHHS presented FAP-OI budgets from February 2020 through May 2020. Exhibit A, pp. 15-21. MDHHS calculated an OI based on \$2,036 in actual FAP issuances during the OI period from documentation listing Respondent's past issuances. Exhibit A, p. 12. Presumably, the FAP-OI budgets used income, expenses, and group size from the original budgets other than including Fiancé's income from Employer2. Fiancé's actual gross employment pays were budgeted, as listed on theworknumber.com documentation.<sup>2</sup> Exhibit A, pp. 22-29. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$1,060 was calculated.

The FAP-OI budgets deprived Petitioner of a 20% credit due to failing to timely report Fiancé's income from Employer2. Thus, for the OI to be correctly calculated, MDHHS must establish that Petitioner failed to timely report Fiancé's income from Employer2.

Respondent testified that she thought that she submitted Fiancé's income documents from Employer2 no later than February 2020. Fiancé testified that he remembers MDHHS calling him in January 2020 about his income from Employer2. Petitioner also testified that she believed it proper to report employment income only after three pays were issued. Fiancé's and Petitioner's testimony implied a reporting of Employer2

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<sup>2</sup> Factoring gross income is compliant with employment income policy (BEM 501) and factoring actual pays is compliant with policy directing how to calculate an overissuance based on client error (BAM 715).

income in January 2020 or February 2020. Petitioner's and Fiancé's testimony were uncorroborated by any documentary evidence.

MDHHS testified that Respondent's electronic case file (ECF) listed that Petitioner submitted income documents concerning Employer1 in January 2020.<sup>3</sup> MDHHS also testified that Petitioner's next submission occurred on May 14, 2020, when income documents for Employer2 were received. MDHHS's testimony did not rule out the possibility of a timely reporting income by Petitioner and a failure by MDHHS to act upon the reporting.

MDHHS also testified that an OI was discovered after a consolidated inquiry listed income for Fiancé from Employer2 in the last quarter of 2019. It was not disputed that Fiancé also received income from Employer2 in the first quarter of 2020. Generally, employment income received in consecutive quarters is indicative of ongoing employment income. This evidence suggested that Fiancé received income from Employer2 in December 2019; this evidence was consistent with income documentation for Employer2. Fiancé's gross pay dated January 29, 2020 (covering the pay period of January 10, 2020, through January 23, 2020) listed a notably higher year-to-date pay. Exhibit A, p. 22. Thus, it can be inferred that Fiancé worked comparable hours in the pay period immediately preceding January 10, 2020: December 27, 2019, through January 9, 2020. The evidence established that Fiancé received income from Employer2 as of 12/27/19

As noted above, Petitioner did not report income for Fiancé from Employer2 on her application dated [REDACTED]/19. Thus, Petitioner inaccurately reported income on her application for benefits. A failure to report income on an application is highly consistent with a failure to later report income.

Given the evidence, Petitioner did not report to MDHHS earlier than May 14, 2020, receipt of income from Employer2. Thus, MDHHS properly deprived Petitioner of a 20% credit for timely reporting income in the FAP-OI budgets.

MDHHS delayed beginning an overissuance period until February 2020 despite Fiancé's earlier employment. The delay is compliant with policy which requires beginning the OI period for unreported changes in income 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.<sup>4</sup>

Petitioner testified that Fiancé's job with Employer2 temporarily stopped in March 2020. Petitioner's testimony was consistent with Fiancé's pay documents verifying that Fiancé did not receive income from Employer2 between April 2, 2020, and May 28, 2020. In the

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<sup>3</sup> An ECF is an electronic database that stores a client's written submissions to MDHHS. BAM 300 (January 2020) p. 1.

<sup>4</sup> If MDHHS believed that Petitioner did not report income on her application dated [REDACTED], 2019, MDHHS could have begun an OI period beginning in December 2019. This is because the income would be unreported before benefits were issued, as opposed to an unreported change.

FAP-OI budgets, MDHHS counted no income for Fiancé between April 2, 2020, and May 28, 2020. Thus, MDHHS accounted for Fiancé's suspension of income from Employer2.

The evidence established that Petitioner's failure to report employment income resulted in \$1,060 in FAP benefits overissued to Petitioner from February 2020 through May 2020. Thus, MDHHS established a recipient claim of \$1,060 against Petitioner.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a recipient claim of \$1,060 for FAP benefits overissued to Petitioner from February 2020 through May 2020 due to client-error. The MDHHS request to establish a recipient claim of \$1,060 against Petitioner is **APPROVED.**

CG/tm



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**Christian Gardocki**

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

**Via Email:**

MDHHS-Macomb-36-Hearings  
MDHHS-Recoupment-Hearings  
M. Holden  
D. Sweeney  
BSC4  
MOAHR

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

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