



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: March 19, 2021  
MOAHR Docket No.: 20-007873  
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 via telephone conference line on March 10, 2021. Petitioner participated and was unrepresented. [REDACTED] of [REDACTED] participated as an English-Arabic translator. The Michigan Department of Health and Human Services (MDHHS) was represented by Darcus Braswell, 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. As of April 2019, Petitioner was an ongoing FAP recipient in an 8-person group along with his adult son, [REDACTED] (hereinafter, "Son").
2. From April 5, 2019, through November 1, 2019, Son received biweekly income from [REDACTED]. (hereinafter, "Employer").
3. From June 2019 through September 2019, Petitioner received a total of \$4,620 in FAP benefits based on \$0 employment income.
4. On February 20, 2020, Petitioner's case was referred to a recoupment specialist.

5. On June 18, 2020, MDHHS calculated that Petitioner received an overissuance (OI) of \$1,101 in FAP benefits from April 2019 through May 2019 due to Son's reported, but unbudgeted, income from Employer.
6. On June 18, 2020, MDHHS calculated that Petitioner received an OI of \$2,216 in FAP benefits from June 2019 through September 2019 due to Son's reported, but unbudgeted, income from Employer.
7. On June 18, 2020, MDHHS sent a Notice of Overissuance to Petitioner stating that Petitioner received \$3,317 in over-issued FAP benefits from April 2019 through September 2019 due to MDHHS's error.
8. On [REDACTED] 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.<sup>1 2</sup> Exhibit A, pp. 3-4. A Notice of Overissuance dated June 18, 2020, stated that Petitioner received \$3,317 in overissued FAP benefits from April 2019 through September 2019 due to agency-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 OI. BAM 700 (January 2016), pp. 1-2. An OI 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

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<sup>1</sup> Petitioner's hearing request dated [REDACTED], 2020 was submitted more than 90 days after the disputed notice was mailed. Petitioner's request may have been untimely as clients only have 90 days to dispute an MDHHS action after written notice is issued (see BAM 600). The timeliness of Petitioner's hearing request was not raised during the hearing and the analysis will proceed to the substance of Petitioner's hearing request.

<sup>2</sup> MDHHS's Hearing Summary indicated that Petitioner requested an in-person hearing. Exhibit A, p. 1. During the hearing, Petitioner agreed to participation by telephone and waived his right to an in-person hearing.

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>3</sup> CFR 273.18(c)(1).

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. As the present case involves an alleged OI exceeding \$250, MDHHS is not barred from pursuing recoupment, as long as the established OI exceeds \$250.

Clients requesting hearings disputing agency-error OIs typically contend that they should not be required to repay benefits issued due to MDHHS's error. Such an argument is based in equity; in other words, it is unjust to have a client pay for a mistake by MDHHS. Though an argument of equity is reasonable, federal regulations and MDHHS policy each authorize MDHHS to recoup FAP benefits even when the benefits are erroneously issued by MDHHS. Thus, MDHHS is not barred from recouping FAP benefits wrongly issued due to its own error.

MDHHS does limit the OI period for agency-caused FAP errors. The OI period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the recoupment specialist, whichever period is later. *Id.*, p. 5. In the present case, MDHHS seeks recoupment for an overissuance period beginning April 2019. MDHHS referred the matter to a recoupment specialist on February 20, 2020. Exhibit A, p. 36. Going back 12 months from the referral date precludes an OI any earlier than February 2019. As MDHHS seeks an OI after February 2019, MDHHS is not barred from doing so.

MDHHS alleged that Petitioner received an OI caused by Son's unbudgeted, though previously reported, income from Employer.<sup>4</sup> <sup>5</sup> Documentation of Son's gross pays from Employer listed gross pays from April 5, 2019, through November 1, 2019. Exhibit A, pp. 30-33. Petitioner did not dispute the amounts or dates of Son's income.

To determine the first month of a FAP overissuance period for changes which are reported timely and not acted on, MDHHS is to allow time for the full standard of promptness (SOP) for change processing and the full negative action suspense period. *Id.*, p. 6. The SOP for processing FAP benefits changes is 10 days. BAM 220 (April 2019) p. 7. The effective month is the first full month that begins after the negative action effective date. BEM 505 (October 2017) p. 12.

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<sup>3</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.

<sup>4</sup> MDHHS did not give evidence as to when Petitioner reported Son's income but acknowledged that Petitioner timely reported Son's income.

<sup>5</sup> MDHHS does not budget employment income for most students under the age of 18 years. BEM 501 (October 2018) p. 2. As of the alleged OI period, Son was older than 18 years; thus, his employment income is countable.

The only evidence of Son's begin date of employment were pay dates beginning April 5, 2019. Allowing for reporting, processing, and the negative action period would allow an OI period in the first full month after 32 days from April 5, 2019: June 2019. Thus, MDHHS may not establish an OI period for April 2019 and May 2019. An OI summary listed OIs for April 2019 and May 2019 of \$547 and \$554, respectively. Thus, MDHHS failed to establish a claim for \$1,101 of its requested OI. The analysis will proceed to consider the alleged OI from June 2019 through September 2019.

MDHHS presented FAP-OI budgets from June 2019 through September 2019 demonstrating how an OI was calculated. Exhibit A, pp. 13-25. In accordance with policy, each FAP-OI budget factored Son's actual gross employment income. A recoupment specialist credibly testified that the FAP-OI budgets deviated from the original FAP budgets other than including Son's income from Employer.<sup>6</sup> As verified from Petitioner's FAP benefit history, the budgets factored Petitioner's actual FAP issuances totaling \$4,620 during the alleged OI period. Exhibit A, p. 12. Petitioner did not dispute any of the calculations involved in the OI. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$2,216 was calculated from June 2019 through September 2019.

The evidence established that Petitioner received an OI of \$2,216 in FAP benefits from June 2019 through September 2019 due to agency-error. Thus, recoupment for \$2,216 of MDHHS's requested claim totaling \$3,317 is proper.

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<sup>6</sup> MDHHS presented a FAP budget from March 2019 to demonstrate the group size, income, and expenses used in budgets during the alleged OI period. Exhibit A, pp. 26-29.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly established a recipient claim of \$2,216 for FAP benefits overissued to Petitioner from June 2019 through September 2019 due to agency-error. Concerning \$2,216 of the recoupment claim of \$3,317, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a recipient claim of \$1,101 for FAP benefits allegedly overissued to Petitioner from April 2019 through May 2019 due to agency-error. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reduce the OI claim against Petitioner by \$1,101; and
- (2) If necessary, return any previously recouped benefits.

Concerning \$1,101 of the recoupment claim of \$3,317, the actions taken by MDHHS are **REVERSED**.

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**Christian Gardocki**

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-Wayne-55-Hearings  
MDHHS-Recoupment  
M. Holden  
D. Sweeney  
BSC4  
MOAHR

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

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