



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: April 16, 2021  
MOAHR Docket No.: 20-008865  
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 hearing was held via telephone conference on April 7, 2021. Petitioner participated and was unrepresented. ██████████, Petitioner’s son, testified on behalf of Petitioner. ██████████ of ██████████ participated as a Bengali-Arabic translator at the beginning of the hearing. ██████████, of ██████████, participated as a Bengali-Arabic translator in the middle of the hearing. ██████████ of ██████████ participated as a Bengali-Arabic translator to finish the hearing. The Michigan Department of Health and Human Services (MDHHS) was represented by Minnie Egbuono, recoupment specialist.

**ISSUE**

The issue is whether MDHHS properly established a basis for recoupment against Petitioner due to allegedly overissued 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. On ██████████ 2018, Petitioner applied for FAP benefits and reported neither employment income nor an obligation for utilities.
2. From an unspecified date in December 2018, through September 6, 2019, Respondent received employment income from ██████████ (hereinafter, “Employer”).

3. On [REDACTED] 2019, Petitioner applied for FAP benefits and reported employment income from Employer and no obligation for utilities.
4. On January 9, 2019, Petitioner submitted a lease to MDHHS stating that the tenant was responsible for all utilities.
5. From February 2019, through September 2019, Petitioner received \$1,418 in FAP benefits based on \$0 employment income.
6. On September 18, 2019, Petitioner's case was referred to the recoupment unit.
7. On November 22, 2019, MDHHS documented that Petitioner was responsible for a heat expense.
8. On July 7, 2020, MDHHS calculated that Petitioner received an overissuance (OI) totaling \$2,176 in FAP benefits from February 2019 through September 2019 due to reported, but unbudgeted, employment income. The calculation did not credit Petitioner for a heat expense obligation.
9. On July 8, 2020, MDHHS sent Petitioner a Notice of Overissuance stating that Petitioner received \$2,176 in overissued FAP benefits from February 2019 through September 2019 due to MDHHS's failure to budget income from Employer.
10. On [REDACTED] 2020, Petitioner requested a hearing to dispute the alleged OI of FAP benefits.

### **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 attempted recoupment of allegedly over-issued FAP benefits. Exhibit A, pp. 4-7. A Notice of Overissuance dated July 8, 2020, alleged that Petitioner received \$2,176 in over-issued FAP benefits from February 2019 through September 2019 due unbudgeted employment income. Exhibit A, pp. 10-15

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the OI. BAM 700 (October 2018) 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 OI. *Id.*

Federal regulations refer to overissuances as “recipient claims” and mandate states to collect them. 7 CFR 273.18(a). Recipient claims 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).

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 recoupment, assuming the OI is established to exceed \$250.

Clients requesting hearings disputing agency-error overissuances typically contend that they should not be required to repay an OI caused by MDHHS’s error. Such an argument is based in equity; in other words, it is inequitable to have a client pay for a mistake caused by MDHHS. Though an argument of equity is reasonable, federal regulations and MDHHS policy each authorize MDHHS to recoup benefits even when caused by MDHHS’s error. Thus, MDHHS is not barred from establishing an OI even when caused by its own error.

MDHHS does limit the OI period for agency-caused FAP errors. The OI period begins the first month the benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the recoupment specialist, whichever period is later. *Id.*, p. 5. In the present case, MDHHS seeks recoupment for an OI beginning February 2019. An eligibility specialist referred the matter to a recoupment specialist on September 18, 2019.<sup>2</sup> Exhibit A, p. 70. Going back 12 months from the referral date precludes an OI earlier than September 2018. As MDHHS seeks an OI beginning February 2019, MDHHS is not procedurally barred from doing so.

The basis of the OI was MDHHS’s alleged failure to budget employment income for Petitioner. MDHHS presented documents from Employer listing a hire date of December 3, 2018. Exhibit A, pp. 39-40. Documentation of Petitioner’s quarterly earnings listed income of \$1,200 during the 4<sup>th</sup> quarter of 2018. Exhibit A, p. 45. Thus, it can be inferred that Petitioner began receiving income from Employer in December 2018. Additional documentation from Employer listed Petitioner’s actual earnings from January 11, 2019, through September 6, 2019. Exhibit A, pp. 41-44.

MDHHS presented FAP-OI budgets from February 2019 through September 2019 demonstrating how an OI was calculated. Exhibit A, pp. 22-37. In accordance with policy, each FAP-OI budget factored Petitioner’s actual gross income for each month. Actual FAP issuances to Petitioner were taken from documentation listing issuances totaling \$1,418

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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 Petitioner’s FAP benefits were expunged.

<sup>2</sup> The eligibility specialist referring the case to recoupment noted that Petitioner’s earnings were unreported and that an intentional program violation was suspected. The referring specialist’s conclusion was wholly unsupported with the evidence and properly changed by the recoupment specialist.

during the OI period. Exhibit A, p. 17. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$2,176 was calculated.

In addition to adding Petitioner's previously unbudgeted employment income, a recoupment specialist testified that Petitioner's rent of \$700 was also included because it was previously not budgeted. The evidence suggested that utilities may have needed updating.

Petitioner testified that, in 2019, he was responsible for payment of heat, electric, and water. Clients responsible for heating or cooling costs are entitled to receive a standard heating/utility (h/u) credit. BEM 545 (August 2017) p. 15. Generally, the h/u credit covers all utility expenses and is the maximum credit available.<sup>3</sup> During the alleged OI period, the h/u credit was \$543 from February 2019 through September 2019. RFT 255 (October 2018) p. 1. MDHHS decreased the h/u credit to \$518 beginning October 2019. RFT 255 (October 2019) p. 1.

The FAP-OI budgets credited Petitioner only with a standard telephone expense of \$31. MDHHS contended that Petitioner was not entitled to additional utility credits because his applications dated [REDACTED] 2018, and [REDACTED], 2019, reported no responsibility for utilities. Exhibit A, pp. 54-69. Petitioner's failure to report a heat expense obligation would justify MDHHS in not budgeting the obligation during the OI period because MDHHS would have no basis to believe Petitioner had a heat obligation. The question remains whether MDHHS had evidence of Petitioner's heat obligation when calculating the alleged OI.

In adding a \$700 rent credit to the OI budgets, MDHHS relied on a lease submitted to MDHHS on January 9, 2019 listing a monthly rent of \$700. Exhibit A, pp. 46-48. The same lease stated, "Tenant agrees to be responsible for and/or pay the cost of all utilities associated with the [p]remises of this lease." MDHHS testimony contended that the lease statement was inadequate verification. MDHHS's contention contradicts its policy which allows leases to verify a heat obligation. BEM 554 (October 2019) p. 16. Thus, MDHHS possessed verification of Petitioner's utility obligation before the OI period.

Various comments on Petitioner's case by MDHHS staff further supported MDHHS's awareness of a heat obligation during the OI period. Exhibit A, p. 49. On November 22, 2019, Petitioner's specialist documented, "There is shelter, gas, lights, water, and phone expense." Thus, as of November 22, 2019, MDHHS knew that Petitioner had a heating obligation. During the hearing, MDHHS contended that Petitioner's reporting was too late because it occurred after the alleged OI period. Assuming Petitioner did not verify a utility obligation in January 2019, a reporting in November 2019 would not justify a change in Petitioner's past FAP eligibility. However, the present case addresses Petitioner's corrected FAP eligibility as performed on FAP-OI budgets dated July 7,

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<sup>3</sup> MDHHS allows additional credits for "actual utility expenses". Such expenses are only allowed for utility installation charges, water well installation and maintenance, and septic installation and maintenance. BEM 554 (October 2019) p. 15. There was no evidence of applicable exceptions.

2020. As of July 7, 2020, MDHHS was aware of Petitioner's heat obligation during the alleged OI period.

The evidence established that Petitioner was responsible for heat during the alleged OI period. The evidence further established that MDHHS verified and was aware of Petitioner's obligation before the OI period. Thus, MDHHS's failure to issue a heat credit in the FAP-OI budgets was erroneous. As all FAP-OI budgets failed to credit Petitioner for a heat obligation, the budgets are rejected for failing to properly calculate an OI and the alleged OI must be denied.


**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a basis for recoupment against Petitioner for \$2,176 in allegedly over-issued FAP benefits from February 2019 through September 2019. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Delete the OI of \$2,176 as a claim against Petitioner; and
- (2) If necessary, return any previously recouped benefits.

The MDHHS request to establish a recipient claim against Petitioner due to agency error is **DENIED**.

CG/tm

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

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

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