



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 26, 2021  
MOAHR Docket No.: 21-000583  
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 18, 2021. Petitioner participated and was unrepresented. [REDACTED], Petitioner's spouse, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Minnie Egbonu, recoupment specialist.

### **ISSUE**

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

### **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 June 2015, Petitioner received ongoing employment income from [REDACTED] (a.k.a. [REDACTED]) (hereinafter, "Employer1").
2. On [REDACTED] 2015, Petitioner applied for FAP benefits and reported ongoing income from Employer1.
3. On June 29, 2015, MDHHS sent Petitioner a Notice of Case Action approving Petitioner for FAP benefits based on \$1,315 employment income. Boilerplate stated to report when household gross employment income exceeded \$2,144. Exhibit A, pp. 57-61.

4. On an unspecified date from July 2015 through September 2015, Petitioner also began receiving income from [REDACTED] (hereinafter, "Employer2").
5. On October 8, 2015, Petitioner's spouse reported to MDHHS that household gross employment income had not changed by more than \$100 from \$1,315 and no changes in employment occurred since last reporting.
6. From December 2015 through May 2016, Petitioner received a total of \$3,251 in FAP benefits based on \$1,315 in gross monthly employment income from Employer1 and \$0 income from Employer2.
7. As of May 2016, Petitioner had not reported to MDHHS income from Employer2.
8. On October 14, 2016, Petitioner's case was referred to a recoupment specialist.
9. On January 20, 2021, MDHHS calculated that Petitioner received an OI of \$1,376 in FAP benefits from December 2015 through May 2016 due to a failure to report income exceeding the simplified reporting limit.
10. On January 20, 2021, MDHHS sent a Notice of Overissuance to Petitioner stating that Petitioner received \$1,376 in over-issued FAP benefits from December 2015 through May 2016 due to client error.
11. On [REDACTED] 2021, Petitioner requested a hearing to dispute the alleged OI.

### **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. 4-5. A Notice of Overissuance dated January 20, 2021, stated that Petitioner received \$1,376 in over-issued FAP benefits from December 2015 through May 2016 due to client-error. Exhibit A, pp. 8-13

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 OI. *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).

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 alleged that Petitioner received an OI of FAP benefits by failing to accurately report income on a Semi-Annual Contact Report. Petitioner submitted an SACR to MDHHS on October 8, 2015 and reported that household employment income had not changed by more than \$100 from \$1,315. Exhibit A, pp. 55-56. The \$1,315 was budgeted from Petitioner’s reporting of income from Employer on an earlier application Exhibit A, pp. 63-93.

On SACRs, the client’s gross earned income from his/her most current budget is pre-filled. BAM 210 (October 2015) p. 10. If the client indicates his/her gross earned income has not changed by more than \$100, verification of the past 30 days income is not required. *Id.* MDHHS requires that clients accurately answer all questions on forms and in interviews. BAM 105 (January 2018) p. 1.

MDHHS presented records of Petitioner’s quarterly earnings from 2015. Exhibit A, p. 36. For the 3<sup>rd</sup> quarter of 2015, income from Employer1 and Employer2 totaling \$6,436.07 was listed; an average of \$2,145 (dropping cents) in monthly income. For the 4<sup>th</sup> quarter of 2015, income from Employer1 and Employer2 totaling \$7,403.08 was listed; an average of \$2,467 (dropping cents) in monthly income. Thus, Petitioner’s average monthly income as of October 2016 was more than \$100 from the \$1,315 in monthly gross income reported on the SACR.

Petitioner and his spouse each testified that income from Employer2 was reported to MDHHS shortly after he began employment in the third quarter of 2015. In response, the testifying recoupment specialist checked Petitioner’s electronic case file (ECF). Exhibit A, pp. 48-54. An ECF is a database of a client’s correspondence. The recoupment specialist credibly testified that no records of income from Employer2 were indicated in the ECF from before or during the OI period.<sup>2</sup> Non-reporting of income from Employer2 was further supported by specialist comments on Petitioner’s case which notably did not document a reporting of income from Employer2 either before or during the alleged OI period. Exhibit A, pp. 37-38.

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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.

<sup>2</sup> A September 30, 2015, income submission was documented on the ECF. During the hearing, a recoupment specialist testified that opening the submission revealed income records for Employer1, not for Employer2.

The evidence of inaccurate reporting of income on a SACR was more persuasive than Petitioner's and spouse's uncorroborated claim of a timely reporting of income from Employer2. The evidence established that Petitioner inaccurately reported income on a SACR and there was no subsequent reporting of income.

MDHHS presented FAP-OI budgets from December 2015 through May 2016 demonstrating how an OI was calculated. Exhibit A, pp. 19-30. For all months, MDHHS factored Petitioner's averaged quarterly income from Employer2. For December 2015, averaged quarterly earnings from Employer1 were factored. For all months after December 2015, MDHHS used Petitioner's actual earnings from Employer1. Exhibit A, pp. 31-33. MDHHS credibly testified that other income and expenses were not changed from the original FAP budgets.<sup>3</sup> MDHHS factored Petitioner's actual issuances totaling \$3,251 from documentation of Petitioner's past issuances. Exhibit A, p. 15. Based on Petitioner's inaccurate response on a SACR, employment income exceeding \$1,315 was factored as unreported which resulted in a denial of a 20% credit given for timely reported income. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$1,376 was calculated.

MDHHS delayed beginning an overissuance period until December 2015 despite an SACR reporting inaccurate information in October 2015 and earlier employment with Employer2. 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.

Petitioner's hearing request and testimony emphasized the lengthy time between the OI and its pursuit. The lapse in time merits an examination of any limits on MDHHS to pursue an OI. For client errors, the OI period begins the first month a benefit issuance exceeds the amount allowed by policy or 72 months before the date it was referred to the RS, whichever is later. MDHHS referred the case to a recoupment specialist on October 14, 2016. Exhibit A, p. 94. The OI period was within 72 months before recoupment specialist referral. There are no known limits on MDHHS pursuing an OI after it is referred to a recoupment specialist. Thus, MDHHS is not barred from establishing an OI in the present case.

The evidence established that Petitioner's failure to report employment income resulted in \$1,376 in FAP benefits overissued to Petitioner from December 2015 through May 2016. Thus, MDHHS established a recipient claim of \$1,376 against Petitioner.

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<sup>3</sup> MDHHS presented a FAP budget from December 2015 to corroborate its testimony. Exhibit A, pp. 17-18.

**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 \$1,376 for FAP benefits overissued to Petitioner from December 2015 through May 2016 due to client-error. The MDHHS actions to establish a recipient claim of \$1,376 against Petitioner are **AFFIRMED**.

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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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