



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: April 21, 2021  
MOAHR Docket No.: 21-001469  
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 April 14, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Lacre Barnett, recoupment specialist.

### **ISSUES**

The issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly over-issued 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. On [REDACTED] 2019, Petitioner applied for FAP benefits and reported employment income with [REDACTED] (hereinafter, "Employer1").
2. As of November 2019, Petitioner was a simplified reporter and an ongoing FAP recipient with no budgeted employment income.
3. From December 2019 through August 2020, Petitioner received the following gross monthly employment income from [REDACTED] (hereinafter, "Employer2"): December 2019 \$4,822, January 2020 \$4,676, February 2020 \$4,147, March 2020 \$2,798, April 2020 \$340, May 2020 \$1,240, June 2020 \$1,016, July 2020 \$4,414, and August 2020 \$2,837.

4. In January 2020, Petitioner received a total of \$253 in FAP benefits.
5. From February 2020 through March 2020, Petitioner received a total of \$610 in FAP benefits based on \$0 in gross monthly employment income from Employer2.
6. From July 2020 through August 2020 Petitioner received a total of \$712 in FAP benefits based on \$0 in gross monthly employment income from Employer2.
7. On August 24, 2020, Petitioner reported to MDHHS income from Employer2 for the first time.
8. On August 27, 2020, Petitioner's case was referred to a recoupment specialist. Exhibit A, p. 48.
9. On January 6, 2021, MDHHS calculated that Petitioner received an over-issuance (OI) of \$2,131 in FAP benefits from January 2020 through August 2020 due to a failure to timely report income from Employer. For the OI month of January 2020, Petitioner's OI was calculated to be \$253. From April 2020 through June 2020, Petitioner was found eligible to receive some FAP benefits.
10. On January 6, 2021, MDHHS sent a Notice of Overissuance to Petitioner stating that Petitioner received \$2,131 in over-issued FAP benefits from January 2020 through August 2020 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 6, 2021, stated that Petitioner received \$2,131 in over-issued FAP benefits from January 2020 through August 2020 due to client-error. Exhibit A, pp. 7-12.

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 OIs 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.

State agencies may establish a simplified reporting (SR) system. 7 CFR 273.12(a)(5). A household subject to SR must report when its monthly gross income exceeds the monthly gross income limit for its household size, as defined at § 273.9(a)(1). 7 CFR 273.12(a)(1)(H)(v). The SR income limit is 130% of the federal poverty level. *Id.* MDHHS employs SR income limits. SR groups are required to report only when the group’s actual gross monthly income exceeds the income limit for their group size. BAM 200 (January 2017) p. 1. No other change reporting is required. *Id.*

MDHHS alleged that Petitioner failed to report her income from Employer2 exceeded the SR income limit beginning December 2019. As of December 2019, Petitioner was a simplified reporter based on reported income from Employer1 in her application dated [REDACTED] 2019. Exhibit A, pp. 41-47. Presumably, Petitioner reported a stoppage in her income from Employer1 shortly thereafter as no employment income was budgeted during the alleged OI period. Despite having no employment income as of December 2019, she remained a simplified reporter. It was not disputed that Petitioner and her minor child were the only members of Petitioner’s FAP group from December 2019 through the end of the alleged OI period. As the grantee for a two-person FAP group as of December 2019, Petitioner was obligated to report to MDHHS when gross household monthly income exceeded \$1,832. RFT 250 (October 2019) p. 1.

MDHHS presented theworknumber.com records for Petitioner’s employment with Employer2. Exhibit A, pp. 34-36. The records listed all of Petitioner’s gross pays beginning November 29, 2019. The records established the following monthly income from Employer for Petitioner (dropping cents):

December 2019	\$4,822
January 2020	\$4,676
February 2020	\$4,147
March 2020	\$2,798
April 2020	\$340
May 2020	\$1,240
June 2020	\$1,016

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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.

July 2020	\$4,414
August 2020	\$2,837

MDHHS testified that Petitioner did not inform MDHHS of her employment with Employer2 until submitting a Redetermination form to MDHHS on August 24, 2020. Petitioner responded that she submitted documents to MDHHS shortly after her employment with Employer2 started in November 2019. During the hearing, MDHHS checked Petitioner's electronic case file which is a computerized database of a client's submissions. MDHHS credibly testified that Petitioner submitted no documents from the beginning of her employment until a redetermination form was received on August 24, 2020. Petitioner's untimely reporting of income from Employer2 is consistent with the absence of budgeted income from Employer2 until after August 2020. The evidence established that Petitioner did not report to MDHHS income from Employer2 until August 24, 2020; thus, any OI from August 2020 and earlier was caused by client error.

MDHHS began the alleged OI period in January 2020. For client caused OIs involving SR, the first month of the OI is two months after the actual monthly income exceeded the SR limit. BAM 715 (October 2017) p. 5. This accounts for the 10 days to report by the client, the 10 days for the specialist to act on the change and the 12-day negative action period. *Id.* The evidence established that Respondent's income from Employer2 exceeded the SR limit of \$1,832 beginning December 2019. Starting the OI period two months later justifies beginning the OI period February 2020. A FAP-OI budget for January 2020 documented an alleged OI of \$253 for January 2020. Exhibit A, pp. 31-32. As MDHHS may not begin an OI period for January 2020, the \$253 claim for FAP benefits allegedly over-issued to Respondent in January 2020 must be reversed.

FAP-OI budgets from April 2020 through June 2020 calculated an OI totaling \$556. Exhibit A, pp. 21-26. Each month calculated that Petitioner was eligible for some amount of FAP benefits. MDHHS issued memorandum ESA 2020-15 on March 26, 2020, under the Economic Stability Administration, which states that FAP recipients are to receive the maximum FAP issuance for their group size. The policy originally lasted two months; however, it has been extended monthly past June 2020. Petitioner's partial FAP eligibility for April 2020 through June 2020, rendered her fully eligible to receive the maximum amount of FAP benefits. Thus, no FAP-OI could have occurred from April 2020 through June 2020. During the hearing, MDHHS acknowledged its error. Given the evidence, the \$556 claim of FAP benefits allegedly over-issued to Respondent from April 2020 through June 2020 is appropriately reversed; MDHHS is left with an OI claim for four months.

MDHHS presented FAP-OI budgets from February 2020, March 2020, July 2020, and August 2020 demonstrating how an OI was calculated. Exhibit A, pp. 16-20 and 27-30. For all months, MDHHS factored Petitioner's actual gross income from Employer2. MDHHS testimony implied that other income and expenses were unchanged from the original FAP budgets. MDHHS factored Petitioner's actual issuances totaling \$1,322 from documentation listing Petitioner's past issuances. Exhibit A, pp. 13-15. Based on Petitioner's failure to report income from Employer2, MDHHS denied a 20% credit for

timely reported employment income. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$1,322 was calculated.

The evidence established that Petitioner's failure to report income exceeding the SR income limit resulted in \$1,322 in FAP benefits over-issued to Petitioner in February 2020, March 2020, July 2020, and August 2020. Thus, MDHHS established a recipient claim of \$1,322 against Petitioner due to client error.

### **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 \$1,322 for FAP benefits over-issued to Petitioner in February 2020, March 2020, July 2020, and August 2020. due to client-error. The MDHHS actions to establish against Petitioner a recipient claim of \$1,322 from a requested claim of \$2,131 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 against Petitioner for \$253 in January 2020, and \$556 from April 2020 through June 2020. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Delete \$809 of the alleged recipient claim against Petitioner; and
- (2) If necessary, return any previously recouped benefits.

The MDHHS actions to establish against Petitioner a recipient claim of \$809 from a requested claim of \$2,131 are **REVERSED**.

CG/cc

  
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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

**DHHS Department Rep.**

MDHHS-Oakland-District-IV-Hearings  
MDHHS-Recoupment-Hearings  
BSC4-HearingDecisions  
D. Sweeney  
M. Holden  
MOAHR

**Petitioner- Via USPS:**

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