



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: May 3, 2021
MOAHR Docket No.: 21-001482
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 telephone hearing was held on April 29, 2021. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Tracy Upshaw, Recoupment Specialist.

ISSUE

Did the Department properly determine a Client Error (CE) overissuance (OI) of the Family Independence Program (FIP)?

Did the Department properly determine an Agency Error (AE) OI of the Food Assistance Program (FAP)?

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] 2020, Petitioner submitted an Application for FAP, FIP, and Medical Assistance (MA) Program benefits indicating that she was hoping to receive Short Term Disability income as she was not working following a car accident and listing a childcare expense of \$250.00 per week.
2. The Department continued to budget Petitioner's dependent care expense and listed it as necessary for employment.
3. On March 19, 2020, Petitioner began receiving Long Term Disability (LTD) income in the amount of \$1,294.46 per month but she did not report it to the Department.

4. Petitioner was a FIP recipient from June 2020 through January 2021.
5. Petitioner was a FAP recipient from June 2020 through February 2021.
6. On March 2, 2021, the Department issued a Notice of Overissuance to Petitioner informing her that the Department had determined she received a CE OI for the period June 2020 through January 2021 in the amount of \$6,176.00 that was discovered during a Quality Control Audit for Petitioner's failure to report LTD income.
7. On the same day, the Department issued a second Notice of Overissuance to Petitioner informing her that the Department had determined she received an AE OI for the period June 2020 through February 2021 in the amount of \$4,809.00 during a Quality Control Audit based upon the Department's failure to remove a childcare expense while Petitioner was unemployed.
8. An adjustment was made to the CE OI after additional review showed that Petitioner's LTD income stopped in October 2020 and the OI attributable to November 2020 through January 2021 was deleted; the adjusted OI was determined to be \$4,094.00.
9. An adjustment was made to the AE OI after additional review showed that not only had Petitioner's LTD income stopped in October 2020, but Petitioner was also eligible for a reduced FAP benefit in January and February 2021, due to COVID-19 policies, she was afforded the full FAP benefit rate for her group size; the adjusted OI was determined to be \$2,783.00.
10. On March 8, 2021, the Department received Petitioner's request for hearing disputing the determinations of OI for FIP and FAP.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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. The

Department (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.

Petitioner disputes the Department's determination of a CE OI for the period June 2020 through October 2020 of FIP in the amount of \$4,094.00 and of an AE OI for the period June 2020 through December 2020 of FAP in the amount of \$2,783.00. Client error OIs exist when a client gives incorrect or incomplete information to the Department. BAM 715 (October 2017), p. 1. Agency error OIs are caused by incorrect actions, including delays or no action, by the Department. BAM 705 (October 2018), p. 1. The Department must attempt to recoup all FIP and FAP OIs greater than \$250.00 per program. BAM 700 (October 2018), pp. 1, 10. Policy further provides that if upon a timely hearing request, an administrative hearing decision upholds the Department's actions, the client must repay the OI. BAM 700, p. 3.

In this case, the Department determined that Petitioner received an OI in both programs based upon her failure to report LTD income. All countable income is considered in determining a client's FIP and FAP eligibility. BEM 500 (July 2017), p. 3. LTD income is considered unearned income and the gross amount is budgeted for both FIP and FAP. BEM 503, p. 32. Petitioner admits that she did not timely report the LTD income to the Department. As a result, the Department did not budget the income and Petitioner's benefits continued to be issued based upon \$0.00 household income. The Department properly determined that there was a CE in Petitioner failing to report the income for both FIP and FAP.

In addition to the CE for failure to report the LTD income, the Department also determined Petitioner received an AE OI because the Department improperly budgeted a dependent care expense in Petitioner's FAP budget. Under BEM 554, the Department considers an unreimbursed dependent care expense for a child under the age of 18 who is a member of the FAP group when the care expense is necessary to enable a member of the FAP group to work. BEM 554, p. 7. Work includes situations where the group member is seeking work, accepting or continuing employment, or training and education in preparation for employment. *Id.* Although the Quality Control Auditor initially determined Petitioner ineligible for this expense deduction because the Department pays the expense, this determination was inaccurate. Petitioner's childcare expense is not paid by the Department. Despite the error by the Quality Control Auditor, the Recoupment Specialist properly determined that Petitioner is still not eligible for the expense deduction because it is only applicable to FAP groups where the childcare expense allows a group member to work. Since Petitioner is unable to work and has not worked since December 2019, Petitioner was not eligible for the dependent care expense deduction in her FAP budget. The Department properly determined an AE based upon the Department's failure to remove the dependent care expense deduction from Petitioner's FAP budget.

In support of its FIP CE OI calculation, the Department presented FIP OI budgets for each month of the OI period between June 2020 and October 2020. The Department

properly budgeted Petitioner's LTD income in each budget. The Department also properly deducted Petitioner's income from the payment standard of \$694.00 for a group size of 5 and determined that Petitioner was ineligible for FIP benefits in each month. RFT 210 (April 2017), p. 1; BEM 515 (October 2018), p. 1. Petitioner received \$694.00 in FIP benefits per month between June and October 2020 except in August 2020 when she received \$1,318.00. Therefore, the Department properly determined an OI of \$4,094.00.

In support of its FAP AE OI calculation, the Department presented FAP OI budgets for each month of the OI period between June 2020 and December 2020. In these budgets, the Department properly considered Petitioner's LTD income and properly removed the dependent care expense deduction from the budgets. However, the Department improperly continued to budget Petitioner's FIP allotment. Even though Petitioner physically received this benefit when it was issued, Petitioner is now responsible for an OI of FIP benefits during the same period. The Department cannot in one instance say Petitioner must pay the money back because she was ineligible but then for the same period of time use that money to count against her in determining her FAP eligibility. Doing as the Department has done here essentially makes Petitioner pay back FIP benefits in an amount more than she received. Furthermore, since she is now responsible for an OI of FIP, it is arguable that she has not actually "received" the FIP benefit. Therefore, the FIP benefit that Petitioner actually received from June through October 2020 should not have been included in the FAP OI budgets and the OI calculation for these months is incorrect. The FAP OI attributable to June through October 2020 is removed from the total FAP OI. In addition, the FAP OI calculated by the Department for November and December 2020 is \$106.00. Per policy, the Department is limited in pursuit of OI to amounts which are greater than or equal to \$250.00 per program. Since the remaining OI attributable to November and December 2020 is less than \$250.00 for FAP, the Department may not recoup or collect this amount.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it determined a CE OI of FIP in the amount of \$4,094.00, but failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined an AE OI of FAP in the amount of \$2,783.00.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to **the FIP OI** and **REVERSED IN PART** with respect to **FAP OI**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Begin recoupment or collections of the FIP OI in the amount of \$4,094.00 for the period June 2020 through October 2020;
2. Delete and cease recoupment or collections of the FAP OI in the amount of \$2,783.00 for the period June 2020 through December 2020.

AMTM/cc



Amanda M. T. Marler
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-Recoupment-Hearings
MDHHS-Macomb-12-Hearings
BSC4-HearingDecisions
D. Sweeney
M. Holden
B. Sanborn
MOAHR

Petitioner- Via USPS:

