



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 17, 2021
MOAHR Docket No.: 21-001936
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 May 12, 2021. The Petitioner appeared for the hearing and was represented by his Authorized Hearings Representative [REDACTED] (AHR). The Department of Health and Human Services (Department) was represented by Minnie Egbunu.

ISSUE

Did the Department properly determine a client error (CE) overissuance (OI) of 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 June 23, 2016, the Department received Petitioner's completed Redetermination for FAP indicating he had no sources of income.
2. On [REDACTED] 2016, Petitioner and his case worker completed a Redetermination interview and his caseworker noted that Petitioner "expects to start employment @ [REDACTED]" (Employer).
3. Petitioner asserted through his hearing summary and AHR that he had advised his caseworker that he had been hired by Employer, that he would be working 20 to 32 hours per week earning \$11.00 per hour, and that he only needed to contact his worker if something in his work situation changed; he was not advised to submit pay stubs or other employment verifications.

4. Petitioner was hired by Employer on [REDACTED] 2016, the same day as the Redetermination interview.
5. On the same day that Petitioner was hired, and the Redetermination interview was completed, the Department issued a Notice of Case Action to Petitioner advising him that he was eligible for \$194.00 per month in FAP benefits based upon \$0.00 earned income and advising him to report any changes in circumstances that affect his eligibility including income.
6. In November 2017, the Department discovered Petitioner's income via a New Hire Employment Report.
7. On [REDACTED] 2017, Petitioner timely returned a completed New Hire Client Notice to the Department.
8. There are no case comments regarding the completed New Hire Client Notice.
9. On May 2, 2019, the Department created an Overissuance Referral.
10. On March 17, 2021, the Department issued a Notice of Overissuance to Petitioner informing him that the Department had determined that he had received an CE OI of FAP benefits for the period September 2016 through January 2017 in the amount of \$890.00.
11. On April 7, 2021, the Department received Petitioner's request for hearing disputing the Department's determination of a CE OI indicating he had reported his employment to his case worker during a telephone meeting.

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 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.

In this case, the Department alleges that Petitioner received a Client Error OI for the period September 1, 2016 through January 1, 2017 in the amount of \$890.00.

Client error OIs exist when a client gives incorrect or incomplete information to the Department. BAM 715 (January 2016), p. 1. Agency error OIs are caused by incorrect actions, including delayed or no action, by the Department. BAM 705 (January 2016), p. 1. The Department must attempt to recoup all FAP OIs greater than \$250.00. BAM 700 (January 2016), pp. 5, 9, 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 all cases, policy provides that a case worker must refer any suspected OIs to a recoupment specialist within 60 days of suspecting that an OI exists. BAM 700, p. 11. Within 60 days of receiving the referral, a Recoupment Specialist must determine if an OI actually occurred and the types of OI. *Id.* If an OI exists, the Recoupment Specialist must then do the following within 90 days: obtain all evidence needed to establish an OI, calculate the amount, send a Notice of Overissuance and Repayment Agreement to the client, enter the claim in Bridges for all programs, refer any intentional program violations to the Office of Inspector General for Investigation, and send an Overissuance Referral Disposition to the caseworker explaining the final disposition. *Id.* Finally, the Michigan Legislature has required that the Department (previously known as the Family Independence Agency and the Department of Human Services) must "promulgate all rules necessary or desirable for the administration of programs..." MCL 400.6(1) In addition, the Department "may develop regulations to implement the goals and principles of assistance programs...that are necessary or desirable to administer the programs... [which] are effective and binding on all those affected by the assistance programs. MCL 400.6(2). Federal regulations provide that the Department "must establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered...unless [the Department] develop[s] and use[s] [its] own standard and procedures that have been approved by [the United States Department of Agriculture Food and Nutrition Service]." 7 CFR 273.18(d)(1) Given the state statute and the federal regulation, the policy draft by the Department and approved by the United States Department of Agriculture Food and Nutrition Service is the policy that is applicable to the Department.

The electronic case file and the Department's overissuance referral show that Respondent completed and returned the New Hire Client Notice on a timely basis on [REDACTED] 2017. This New Hire Client Notice would have confirmed what the Department already suspected that Petitioner had employment income beginning in July 2017 that had not been budgeted. The Department also would have been aware that given no other group members and no budgeted expenses, Petitioner was highly likely to have incurred an overissuance. Given the completed New Hire Client Notice on or about [REDACTED] 2017, the Department should have completed an OI referral by January 29, 2018. The OI Referral was not made in this case until May 2, 2019, more than 15 months after the deadline created by policy. Once the OI Referral was received by the Recoupment Specialist, the Recoupment Specialist had 60 days to determine if an OI existed and an additional 90 days to issue a Notice of Overissuance and Repayment Agreement to Petitioner. While the OI Referral is date stamped as received, the date is not legible other than that it occurred in 2019. Assuming the best possible circumstances for the Department, the recoupment specialist received the

referral on December 31, 2019, the recoupment specialist was required to have completed all necessary actions and issue a Notice of Overissuance to Petitioner by May 29, 2020. The Notice of Overissuance and Repayment Agreement were not issued to Petitioner until March 17, 2021, more than 9 months after the deadline set by Department policy. As is seen here, the Department has in no way complied with its own policies and procedures approved by the United States Department of Agriculture Food and Nutrition Service and mandated by Michigan codified law. Therefore, the Department cannot recoup or collect any alleged OI in this case.

Even if the Department had complied with its own policies and procedures for establishing a claim for overissued FAP benefits, the Department has not established that it properly determined a CE OI. CE OI are created when a client fails to report or gives incomplete information to the Department. BAM 715, p. 1. Conversely, AE OI are created when the Department fails to act or takes an incorrect action. BAM 705, p. 1. After reviewing the evidence here, it is clear that Petitioner reported his income to the Department at the time of his redetermination interview. What is not clear is whether the Department properly advised Petitioner at the time of the reported income of his duty to verify the income once he received his first paycheck. Policy provides that the Department should provide clients with a Change Report form, DHS-2240, whenever it seems appropriate given the case circumstances. BAM 105 (April 2016), p. 13. Given that Respondent was reporting a change from what was listed on his Redetermination, a Change Report Form should have been provided. In the alternative, the Department should have issued a Verification Checklist (VCL) to Petitioner as required by policy at the time of reported changes advising Petitioner what verification was required, how to obtain it, and the due date of any verifications. BAM 130 (July 2016), pp. 1, 3. Again the Department failed to follow its own policy. It is also notable that Respondent timely completed the New Hire Client Notice according to the OI Referral and Electronic Case File but then Case Comments from July 2017 say that Respondent's case was closed because he never returned the New Hire Client Notice. Finally, it is notable that Petitioner's local Department office was working under the Universal Case Load (UCL) and only began processing this case upon a "New Hire Notice Clean Up." The UCL created a dynamic where Department workers were no longer assigned to any individual client and any case worker could assist any client. But as seen by the need to conduct a "New Hire Notice Clean Up," backlogs were created in processing information as well as case management. Given Petitioner's prompt reporting that he was just hired, of his anticipated hourly rate, of his anticipated hours worked, his later timely completion of the New Hire Client Notice, and finally the lack of Case Comments by any Department worker between the time of the interview in [REDACTED] 2016 and then the inaccurate notation in July 2017, it seems that the error was more than likely to be with the Department and not Petitioner. Therefore, this case is reclassified as an AE and not a CE.

AE cases are limited in its recoupment or collections to the 12 months before the date that the OI was referred to the recoupment specialist. BAM 705, p. 5. Since the OI Referral was made on May 2, 2019, the Department is limited in its recoupment to the 12 months prior, or for the period between May 2018 and April 2019. The OI in this

case was attributable to the period September 2016 through January 2017, well beyond the 12-month period allowed for AE OI. Therefore, the Department has again failed to establish that they are entitled to recoupment or collections of the alleged OI.

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 did not act in accordance with Department policy when it determined a client error overissuance for the period September 2016 through January 2017.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

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. Delete the \$890.00 claim for the period September 2016 through January 2017 and cease all recoupment or collections actions.

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-Wayne-15-Greydale-Hearings
MDHHS-Recoupment-Hearings
D. Sweeney
M. Holden
MOAHR

Petitioner- Via USPS:

[REDACTED]

Authorized Hearing Rep.- Via USPS:

[REDACTED]