



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
████████████████████
██████████ MI ██████████

Date Mailed: August 6, 2021
MOAHR Docket No.: 21-003197
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 July 28, 2021, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Minnie Egbuonu, Recoupment Specialist.

ISSUE

Did Petitioner receive an agency error overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing recipient of FAP benefits.
2. At the time of Petitioner's June 2018 FAP redetermination, Petitioner reported that she would be temporarily off work for six weeks and that her last date of work would be June 8, 2018. Petitioner submitted documentation from her employer indicating that she would be on leave from her job from June 8, 2018, through July 22, 2018. (Exhibit A, pp. 47-56)
3. The Department failed to timely request verification of Petitioner's income upon her return to work.
4. On or around May 29, 2019, the Department completed an Overissuance Referral, as it was discovered that Petitioner had returned to work, but her income had not

been budgeted or considered for her FAP eligibility. The referral was sent to a recoupment specialist for processing.

5. The Department obtained verification of Petitioner's employment and income through the Work Number and determined that Petitioner's first paycheck upon returning to work was received on August 3, 2018. The Department determined that from October 1, 2018, to May 31, 2019, Petitioner was overissued FAP benefits due to an agency error.
6. On May 28, 2021, the Department sent Petitioner a Notice of Overissuance, informing her that she received an agency error caused OI of FAP benefits in the amount of \$4,038 for the period of October 1, 2018, through May 31, 2019, due to Petitioner returning to work and the Department's failure to budget her income. (Exhibit A, pp. 8-13)
7. On or around June 25, 2021, Petitioner requested a hearing disputing the Department's actions with respect to the OI. (Exhibit A, pp. 4-5)

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, on May 28, 2021, the Department sent Petitioner a Notice of Overissuance, informing her that she received an agency error caused OI of FAP benefits in the amount of \$4,038 for the period of October 1, 2018, through May 31, 2019, due to Petitioner returning to work and the Department's failure to timely budget her income. (Exhibit A, pp. 8-13). The Department conceded that due to worker error, it had failed to timely request verification of Petitioner's income and return to work. As a result, the Department asserted that Petitioner received FAP benefits that she was not entitled to receive.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (October 2018), p. 1-4. An agency error OI is caused by incorrect actions by the Department, including delayed or no action, which result in the client receiving more benefits than they were entitled to receive. The amount of the overissuance is the benefit amount the group actually

received minus the amount the group was eligible to receive. BAM 700, pp. 4-6; BAM 705 (October 2018), p. 1-6. For agency error OIs, the overissuance period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the recoupment specialist, whichever is later. BAM 705, pp. 5-6.

The Department presented a Benefit Summary Inquiry showing that Petitioner's household received \$4,040 in FAP benefits during the period between October 2018 and May 2019. (Exhibit A, pp. 15-16). The Department asserted that Petitioner's household was only eligible for \$2 in FAP benefits during this period and thus, was overissued FAP benefits in the amount of \$4,038. (Exhibit A, pp. 9, 20-35).

In support of its OI case, the Department presented verification of Petitioner's employment through the Work Number, which detailed the amounts earned and pay dates. (Exhibit A, pp. 36-40). The Department also presented FAP OI Budgets for each month in the October 2018 to May 2019 OI period showing how the OI was calculated. (Exhibit A, pp. 20-35). Upon review, when Petitioner's earned income from employment is included in the calculation of her FAP eligibility, Petitioner's household was eligible to receive \$2 during this period. The Recoupment Specialist testified that no changes were made to the budgets other than the inclusion of the earned income. (Exhibit A, pp. 12-36). It was also established that in consideration of Petitioner's first pay date upon returning to work being August 3, 2018, the Department properly determined that the first month in the OI period would be October 2018, as the Department is to apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. Furthermore, October 2018 falls within the 12 month period prior to the May 2019 OI referral to the recoupment specialist.

Petitioner did not dispute that she was employed, or that she returned to work after a temporary absence, receiving her first paycheck on August 3, 2018. Petitioner further did not dispute that the pay amounts and pay dates reflected in the Work Number were accurate. Petitioner testified that she informed the Department of her return-to-work date and any failure of the Department to act was not her fault. Petitioner asserted that she should not be responsible for the Department's delay in discovering the OI or in its processing. Petitioner further questioned the timeliness of the Department's OI recoupment request and processing, as at the time of the hearing, three years had passed since she returned to work and two years since the Department became aware of the suspected OI.

Within 60 days of suspecting that an OI exists, the Department specialist is to complete a DHS-4701 Overissuance Referral and refer to the recoupment specialist assigned to the district office. BAM 700, pp. 10-12. Within 60 days of receiving the referral, the recoupment specialist must determine if an overissuance actually occurred and determine the type. Within 90 days of determining an overissuance occurred, the recoupment specialist must: obtain all evidence needed to establish an overissuance and calculate the agency error amount; establish the discovery date; send a Notice of Overissuance and Repay Agreement documents (DHS-4358A, B, C & D) to the client;

enter the programs on the benefit recovery system (BRS); and send a DHS-4701A, Overissuance Referral Disposition to the specialist explaining the final disposition of the error. BAM 700, pp. 10-13; BAM 705, pp. 3-6,10.

In this case, the Recoupment Specialist present for the hearing testified that the recoupment specialist assigned to the Hamtramck district office of the Department received the Overissuance Referral from the Department case worker on or around May 29, 2019; however, due to a backlog of recoupment cases that had been referred, no action was taken on the referral. The Recoupment Specialist testified that because of the assigned recoupment specialist's backlog, Petitioner's case was forwarded to her for processing. The Recoupment Specialist testified that she received the referral and began processing in July but did not specify the year.

Federal regulations indicate that a State agency, such as the Department, must "establish a claim before the last day of the quarter following the quarter in which the overpayment . . . was discovered" and is to "ensure that no less than 90 percent of all claim referrals are either established or disposed of according to this time frame." See 7 CFR 273.18(d)(1). In the alternative, the Federal regulations allow for each State agency to develop and use its own standard and procedures for the efficient and effective management of claim referrals for benefits that are overpaid. 7 CFR 273.18 (a), (d)(1)-(2).

While the Department policy outlined above requires that the recoupment specialist complete the OI establishment process within 90 days of determining that the overissuance occurred, the Federal regulations at 7 CFR 273.18(d)(3) require the Department to establish the OI claim, even if it cannot be established within the timeframes outlined in 7 CFR 273.18(d). Therefore, the Department is authorized to pursue recoupment of the agency error OI in this case.

Upon review, the Department is entitled to recoup or collect from Petitioner \$4,038 in FAP benefits which is the difference between the \$4,040 in FAP benefits actually issued to her from October 2018 to May 2019 and the \$2 in FAP benefits she was eligible to receive.

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 establish a FAP benefit agency error OI to Petitioner in the amount of \$4,038.

DECISION AND ORDER

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

The Department is ORDERED to initiate recoupment and/or collection procedures for a \$4,038 agency error FAP OI in accordance with Department policy, less any amount that has already been recouped/collected.



Zainab A. Baydoun
Administrative Law Judge

ZB/jm

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
MDHHS-Wayne-57-Hearings
M. Holden
D. Sweeney
BSC4-HearingDecisions
MOAHR

Petitioner – Via First-Class Mail:

██████████
████████████████████
██████████ MI ██████████