



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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██████████, MI ██████████

Date Mailed: December 8, 2021
MOAHR Docket No.: 21-005123
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 November 29, 2021. Petitioner appeared and represented herself. Julie Luczak, Recoupment Specialist, represented the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly determine the alleged Food Assistance Program (FAP) overissuance (OI)?

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. On September 23, 2015, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits at a decreased amount of \$██████████ per month, effective October 1, 2015 to December 31, 2016 (Exhibit A, p. 45). The FAP budget was based on \$0 earned income and ██████████ in unearned income (Exhibit A, p. 46). The Notice of Case Action advised Petitioner that she had to report changes in income to MDHHS within ten days (Exhibit A, p. 48).
3. On November 12, 2015, Petitioner was hired at ██████████ (Employer) (Exhibit A, p. 26). Petitioner received her first paycheck from Employer

on December 4, 2015 and continued to work there through at least July 15, 2016 (Exhibit A, p. 27).

4. On [REDACTED] 2016, Petitioner submitted an application for State Emergency Relief (SER) to MDHHS (Exhibit A, pp. 49-68). Petitioner indicated that she was working at Employer and listed a start date of March 17, 2016 (Exhibit A, p. 60).
5. On July 12, 2016, MDHHS sent Petitioner a Notice of Case Action indicating that her FAP case would be closed effective August 1, 2016 ongoing due to excess income (Exhibit A, pp. 40-44).
6. On July 18, 2016, Petitioner's case was referred to an MDHHS recoupment specialist for the alleged OI, indicating that Petitioner failed to report her job at Employer to her caseworker (Exhibit A, p. 112).
7. From February 1, 2016 to July 31, 2016 (alleged OI period), Petitioner received [REDACTED] in FAP benefits for a FAP group-size of one (Exhibit A, p. 12).
8. On October 4, 2021, MDHHS sent Petitioner a Notice of Overissuance, indicating that Petitioner received more benefits than she was eligible to receive from February 1, 2016 to July 31, 2016 due to a client error (Exhibit A, pp. 6-7). Specifically, MDHHS alleged that Petitioner did not properly report income from Employer within the ten-day period, which resulted in an OI of [REDACTED] in FAP benefits (Exhibit A, p. 6).
9. On [REDACTED], 2021, Petitioner filed a hearing request disputing the FAP OI amount (Exhibit A, p. 4).

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. MDHHS 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, MDHHS is alleging that Petitioner was overissued FAP benefits in the amount of [REDACTED] from February 1, 2016 to July 31, 2016 due to Petitioner's failure to report income from Employer within the ten-day reporting period. Petitioner did not dispute that she had earned income from Employer during this period but maintained that she properly reported this income to MDHHS.

When a beneficiary receives more benefits than it is entitled to receive, MDHHS must attend to recoup the OI. BAM 700 (October 2015), p. 1. An OI could be caused by agency error or client error. Agency error refers to a situation where the OI is caused by the incorrect action (or inaction) of MDHHS. BAM 700, p. 4. Client error occurs when the OI is the result of incorrect or incomplete information given by the client. BAM 700, p. 5. Pursuant to policy, MDHHS must pursue client and agency errors that amount to \$250.00 or more. BAM 700, p. 9. The discovery date of the OI is the date Bridges, MDHHS's internal case management tool, automatically inserts when there is an OI and the matter is referred to the recoupment specialist for client or agency error. *Id.* This case was referred to the recoupment specialist on July 18, 2016 and MDHHS alleged that the OI was caused by client error, because Petitioner failed to report income from Employer in a timely manner (Exhibit A, p. 112).

MDHHS presented evidence Petitioner was hired at Employer on November 12, 2015, received her first paycheck on December 4, 2015 and continued working at Employer during the alleged OI period (Exhibit A, p. 26). To determine the first month of the alleged OI period, MDHHS stated that it utilized the "10/10/12" rule. Most recipients of FAP must report changes in employment that may affect eligibility within ten days of receiving the first payment reflecting the change. BAM 105 (July 2015), p. 10. This responsibility includes reporting starting or stopping employment. BAM 105, p. 11. After receiving notice of the change, MDHHS must act on it within ten days. BAM 220 (October 2015), p. 7. If the change results in a reduction in benefits, the client is afforded at least twelve days' notice before the change can go into effect. BAM 220, p. 12. Employing this method, MDHHS properly determined February 2016 to be the first month of the alleged OI period.

At the hearing, Petitioner expressed concerns regarding the delay in pursuing this OI and the undersigned Administrative Law Judge shares these concerns. By waiting over five years to pursue this claim, Petitioner is at a disadvantage because any evidence to support her contention that she did notify MDHHS of the income is stale or unavailable. However, federal regulations require MDHHS to pursue OI's even if they are not within the timeliness standards described in the regulations. 7 CFR 273.18(d)(3); BAM 700, p. 11. Regarding the reason for the delay, MDHHS could only offer that it is short-staffed and lengthy backlogs are common.

Whether the OI was caused by client or agency error is significant in this case because it affects how the OI is calculated. MDHHS submitted OI Budgets for each month during the alleged OI period. On each OI Budget, MDHHS included the total amount of unreported earned income for the month, based on the payroll information provided by Employer (Exhibit A, pp. 26-27). For unreported income, MDHHS is required to use the actual income and the client is not entitled to the 20% earned income deduction. BAM 720 (January 2016, p. 10). However, in this case, Petitioner testified that she did report this income to MDHHS timely and that the OI was cause by agency error because MDHHS failed to process her income. If Petitioner did report the income timely, then she would be entitled to the earned income deduction.

At the hearing, Petitioner credibly testified that she is careful to follow MDHHS rules and that she did report this income timely. However, she could not produce any evidence to that effect, because she does not keep documents that are over three years old. MDHHS maintained that the OI was caused by client error and that the first time MDHHS became aware of the income from Employer was when Petitioner reported it on the SER application on [REDACTED] 2016. However, MDHHS did not submit documentation showing that Petitioner did not report the income either in writing or verbally, such as case notes or testimony from her caseworker. Additionally, the delay in pursuing this OI prevented Petitioner from advancing her claim that she did report the income to MDHHS.

Therefore, 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 did not act in accordance with Department policy when it calculated the OI amount.

DECISION AND ORDER

Accordingly, MDHHS's decision is **REVERSED**.

MDHHS 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. Recalculate the FAP OI budgets for the OI period budgeting the 20% earned income disregard in accordance with Department policy and consistent with this hearing decision; and
2. Notify Petitioner of its decision in writing.

LJ/tm



Linda Jordan
Administrative Law Judge

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-Ionia-Hearings
M. Holden
D. Sweeney
MDHHS-Recoupment-Hearings
BSC3
MOAHR

Petitioner – Via First-Class Mail:

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