



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: May 12, 2022
MOAHR Docket No.: 21-005286-RECON
Agency No.: [REDACTED]
Petitioner: MDHHS OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

ORDER GRANTING REQUEST FOR RECONSIDERATION
AND
DECISION AN ORDER OF RECONSIDERATION

On [REDACTED] 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received from the Michigan Department of Health and Human Services (MDHHS) Office of Inspector General (OIG/Petitioner) a request for rehearing and/or reconsideration of the Hearing Decision issued on [REDACTED] 2022 by the undersigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on [REDACTED] 2022 in the above-captioned matter.

The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy in the Bridges Administrative Manual (BAM) 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application or services at issue and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. MCL 24.287 also provides a statutory basis for a rehearing of an administrative hearing.

A rehearing is a full hearing which may be granted if the original hearing record is inadequate for purposes of judicial review or there is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision. BAM 600 ([REDACTED] 2021), p. 44. A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing. It may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties is able to demonstrate that the presiding ALJ failed to accurately address all the relevant issues raised in the hearing request. BAM 600, p. 44.

MDHHS OIG may file a written request for a rehearing/reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision, which led to the wrong decision;
- Typographical errors, mathematical error, or other obvious errors in the hearing decision that affect the substantial rights of the petitioner; or
- Failure of the ALJ to address other relevant issues in the hearing decision. BAM 600, p. 45.

A request for reconsideration which presents the same issues previously ruled on, either expressly or by reasonable implication, shall not be granted. Mich Admin Code, R 792.10135.

In the present case, OIG requested a hearing to establish a debt, alleging that Respondent was overissued Food Assistance Program (FAP) benefits in the amount of [REDACTED] from [REDACTED] 2021 to [REDACTED] 2021. The undersigned ALJ issued a Hearing Decision on [REDACTED] 2022, which found that MDHHS had not established that it was entitled to repayment from Respondent of [REDACTED] in overissued FAP benefits because it was unable to confirm that the 15% benefit increase was excluded from the OI amount, which it is required to do by policy.¹

On [REDACTED] 2022, MOAHR received a request for rehearing/reconsideration from Petitioner OIG which claimed that a reconsideration was justified due to a misapplication of manual policy or law in the hearing decision, which led to the wrong conclusion. The request detailed the amounts that MDHHS used to determine the FAP OI, including Respondent's ongoing FAP benefit rate and the 15% benefit increase. Although there has been no showing that there was a misapplication of law or policy in the Hearing Decision, which led to the wrong result, this information establishes that there was a potential mathematical error in the Hearing Decision issued on [REDACTED] 2022. Reconsideration is appropriate to address mathematical errors and the original record is adequate for the purposes of judicial review.

Therefore, OIG's Request for Reconsideration is **GRANTED**.

¹ From January 1, 2021 to September 30, 2021, FAP recipients became eligible for a 15% benefit increase, pursuant to the 2021 Consolidated Appropriations Act, P.L. 116-260 (Appropriations Act), and extended by the American Rescue Plan, P.L. 117-2. Under Section 702(b)(4) of the Appropriations Act, the 15% benefit increase is not subject to recoupment. When requesting recoupment of FAP benefits from January 1, 2021 to September 30, 2021, MDHHS is required to explain how it calculated the OI amount, less the 15% benefit increase. See United States Department of Agriculture, Supplemental Nutrition Assistance Program (SNAP), Consolidated Appropriations Act, 2021 – Questions and Answers (February 19, 2021), available at <<https://www.fns.usda.gov/snap/provisions-consolidated-appropriations-act-2021>> (accessed May 4, 2022).

The Decision and Order of Reconsideration follows a full review of the case file, all exhibits, the hearing record and applicable statutory and policy provisions.

DECISION AND ORDER OF RECONSIDERATION

ISSUE

Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits in the amount of [REDACTED] that MDHHS is entitled to recoup and/or collect as a recipient claim?

FINDINGS OF FACT

The undersigned, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] 2022, a hearing was held in the above captioned matter.
2. On [REDACTED] 2022, the undersigned issued a Hearing Decision in the matter.
3. The Findings of Fact numbers 1 through 8 in the Hearing Decision are incorporated by reference.
4. On [REDACTED] 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Department's timely request for reconsideration, which is granted herein.

CONCLUSIONS OF LAW

MDHHS policies are contained in the MDHHS Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and Mich Admin Code, R 400.3001 to R 400.3031.

MDHHS may request a hearing to request an intentional program violation, a disqualification or to establish a debt. BAM 600 ([REDACTED] 2021) p. 5. When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the OI as a recipient claim. 7 CFR 273.18(a)(2); BAM 700 ([REDACTED] 2018), p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client

was eligible to receive. 7 CFR 273.18(c)(1); BAM 715 (██████████ 2017), p. 6. A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to MDHHS. BAM 700, p. 7.

In this case, MDHHS requested the hearing to establish a debt, alleging that Respondent committed a client error by failing to report a change in household composition. MDHHS argued that the client error led to an OI of FAP benefits in the amount of ██████████. The record shows that on ██████████ 2021, Respondent reported to MDHHS that her minor children's father (Father) no longer lived in the household. On ██████████ 2021, MDHHS sent Respondent a Notice of Case Action indicating that she was approved for FAP benefits and that the household size did not include Father. Accordingly, Father's income information was not included in the FAP benefit rate.

On ██████████ 2021, OIG interviewed Respondent in conjunction with this case (Exhibit A, p. 5). Respondent admitted that Father had been residing in the home and staying overnight to watch the children while Respondent works the night shift (Exhibit A, p. 5). Respondent's statements, whether considered an admission by a party-opponent or the statement of an unavailable declarant against the declarant's pecuniary and proprietary interest, were admissible at the hearing. MRE 801(d)(2); MRE 804(a)(5) and (b)(3). MDHHS also introduced substantial documentary evidence showing that Father lived in Respondent's household, including voter registration records (Exhibit A, p. 66), unemployment records (Exhibit A, pp. 53-54) and paystubs from Employer (Exhibit A, pp. 40-50).

MDHHS presented sufficient evidence to form a firm belief that Father was living in Respondent's household. Parents and their children under ████ years of age who live together must be in the same FAP group. BEM 212 (██████████ 2020), p. 1. Accordingly, Respondent committed a client error by failing to report to MDHHS that Father was living in the household and part of the FAP group.

As part of the FAP group, Father's income should have been considered when determining the FAP group's benefit rate. MDHHS presented an OI Budget for ██████████ 2021, which demonstrated that the inclusion of Father's income made the household ineligible for FAP benefits during that month due to excess income (Exhibit A, p. 74).

MDHHS presented a Benefit Summary Inquiry to show that Respondent received three FAP payments in ██████████ 2021 (Exhibit A, p. 72). The payments included a ██████████ supplemental payment, a ██████████ supplemental payment and a ██████████ ongoing payment.

Due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size would receive a supplement to bring their benefit amount to the maximum for their group size. ESA Memo 2020-15 (██████████ 2020; updated ██████████ 2020). The State of Michigan issued

EA from [REDACTED] 2020 to [REDACTED] 2021. ESA Memo 2022-02 ([REDACTED] 2022). In addition, beginning in [REDACTED] 2021, MDHHS began issuing a minimum [REDACTED] supplement to all FAP households, including households that were already receiving the maximum allotment for their household size. ESA Memo 2021-22 ([REDACTED] 2021). Wrongfully-issued EA are recoupable by MDHHS if the FAP household is not eligible for any FAP benefits during the month at issue.

From [REDACTED] 2021 to [REDACTED] 2021, FAP recipients became eligible for a 15% benefit increase in addition to their monthly allotment and the EA, pursuant to the 2021 Consolidated Appropriations Act, P.L. 116-260 (Appropriations Act), and extended by the American Rescue Plan, P.L. 117-2. Under Section 702(b)(4) of the Appropriations Act, the 15% benefit increase is not subject to recoupment.

At the hearing, MDHHS was asked what the amounts on the Benefit Summary Inquiry represented and what the amount of the ongoing benefit rate was, minus the 15% benefit increase. MDHHS did not provide an answer. However, in its Request for Reconsideration, MDHHS provided an additional explanation. The [REDACTED] payment represented Pandemic-EBT² and MDHHS did not request to recover that amount. The [REDACTED] payment represented the EA, which is recoupable and was included in the alleged OI amount. The ongoing payment of [REDACTED] represents the group's ongoing FAP benefit amount, including the 15% benefit increase. The 15% benefit increase was [REDACTED] which would make the group's FAP benefit rate [REDACTED] dropping the cents. To calculate the OI amount, MDHHS added the ongoing benefit rate of [REDACTED] and the EA of [REDACTED], which equaled [REDACTED].

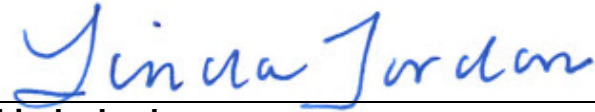
Given that MDHHS presented the evidence concerning the FAP benefits issued to Respondent in [REDACTED] 2021 at the hearing on [REDACTED] [REDACTED] 2022 and MDHHS' explanation of the FAP OI in the Request for Reconsideration was based on that information, the undersigned Administrative Law Judge finds that MDHHS properly calculated the FAP OI amount. Therefore, MDHHS is entitled to repayment from Respondent for a FAP OI in the amount of [REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based on the above and incorporated Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that MDHHS has established that it is entitled to repayment from Respondent of [REDACTED] in overissued FAP benefits due to client error.

² MDHHS issued Pandemic-EBT (P-EBT) to families with school-aged children who temporarily lost access to free or reduced-price meals due to pandemic-related school closures or reduced attendance. ESA Memo 2021-13 (March 2021).

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OI in the amount of \$689.00, less any amounts already recouped/collected for the fraud period.



Linda Jordan
Administrative Law Judge

LJ/tm

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.

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