



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: April 4, 2022
MOAHR Docket No.: 22-000557
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 March 24, 2022. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Marlena Gillis-Spann, Recoupment Specialist.

ISSUE

Did Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits that MDHHS 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 is employed by [REDACTED]. (Employer). Petitioner received her first paycheck on March 28, 2020 (Exhibit A, pp. 31-33).
2. On April 1, 2020, Petitioner applied for FAP for a group size of one. Petitioner reported her employment and income on this application (Exhibit A, pp. 54-60). MDHHS did not include this income in determining Petitioner's FAP benefits.
3. On February 22, 2021, MDHHS received a renewal of FAP benefits to MDHHS from Petitioner, in which she again reported her employment and income (Exhibit A, pp.50-54). Upon receipt of this renewal, MDHHS realized that they had not included Petitioner's earned income in her FAP budget.
4. On January 26, 2022, MDHHS issued a Notice of Overissuance to Petitioner informing her that MDHHS had determined that she received an Agency Error

Overissuance from October 1, 2020 to March 31, 2021 (OI period) in the amount of \$ [REDACTED] because MDHHS had failed to take action on reported income (Exhibit A, pp. 6-11).

5. On February 9, 2022, MDHHS received a timely hearing request from Petitioner disputing MDHHS' recoupment of overissued FAP benefits due to agency error (Exhibit A, p. 64).

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

In this case, Petitioner disputes that, due to agency error, she was overissued FAP benefits in the amount of \$ [REDACTED] from October 1, 2020 to March 31, 2021 that MDHHS is now attempting to recoup.

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 (October 2018), pp. 1-2. An agency error OI is caused by incorrect actions by MDHHS, including delayed or no action, which result in the client receiving more benefits than they were entitled to receive. Here, MDHHS concedes that Petitioner timely reported her employment beginning with Employer, but it failed to timely process the reported change. Therefore, an OI resulted from agency error.

The amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, p. 4-6; BAM 705 (October 2018), pp. 1-6. The overissuance period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the recoupment specialist, whichever 12 month period is later. BAM 705, p. 5. To determine the first month of the overissuance period for changes reported timely and not acted on by MDHHS, Bridges, MDHHS's internal database allows time for the full standard of promptness (SOP) for change processing. BAM 705, p. 5. For income increases that result in a benefit decrease, action must be taken and notice issued to the client within the SOP of 10 days. The effective month is the first full month that begins after the negative action effective date. BEM 505 (October 2017), p. 11. MDHHS

then has ten days to process the change and, if it results in a decrease in benefits, it gives the client 12 days before the negative action impacts the benefits issued. BAM 220 (July 2020), pp. 7, 12. The OI period extends to the first full month after discovery, so that the change could be processed and a decrease in benefits implemented.

Here, Petitioner reported employment on April 1, 2020 in the initial FAP application. MDHHS applied the processing time discussed to start the overissuance period June 1, 2020. Due to the COVID-19 pandemic, the federal government authorized MDHHS to issue Emergency Allotments (EA) to all FAP households, meaning that all 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 2022-22 (January 2022). While the EA are in effect, if Petitioner is eligible for any FAP benefits, then she will be issued the maximum amount for a household size of one. Since Petitioner did qualify to receive some benefits in June, July, August, and September 2020, those months were excluded from the OI period. Therefore, MDHHS properly started the OI period on October 1, 2020.

MDHHS did not include Petitioner's earned income in her household budget until after receiving renewal of benefits on February 24, 2021. Therefore, MDHHS properly ended the OI period March 31, 2021.

MDHHS concluded that Petitioner had excess gross income during the OI period and was not eligible to receive any FAP benefits. From October 1, 2020 to December 1, 2020, the gross income limit for a group size of 1 was \$ [REDACTED]. RFT 250 (October 2020), p. 1. MDHHS determines Petitioner's gross income amount by calculating what Petitioner's FAP budget would have been if her earned income from employment would have been included in the budget. MDHHS uses the income information retrieved from the Work Number database report to calculate Petitioner's household budget (see Exhibit A, pp. 31-33). A standard monthly amount must be determined for each income source used in the budget. Since Petitioner is paid bi-weekly, the bi-weekly income is converted to a standard monthly amount by averaging the income total then multiplying by 2.15. BEM 505 (October 2017) p. 8. MDHHS testified that in calculating Petitioner's monthly budget, they averaged the income received that month, then used the standard multiplier for bi-weekly income 2.15 required by policy to determine the monthly earned income. In reviewing the budgets, it appears that MDHHS incorrectly calculated Petitioner's monthly income amount. However, the correct calculation of averaging the monthly paychecks then multiplying by 2.15 still results in Petitioner having excess gross income in October, November, and December 2020. Therefore, MDHHS properly concluded that Petitioner was overissued benefits that she was otherwise ineligible to receive from October 1, 2020 to December 31, 2020.

In reviewing the monthly budget calculations for January 2021 to March 2021, MDHHS did not account for the 15% benefit supplement that Petitioner received as a result of the Covid-19 pandemic. MDHHS may not recoup this 15% benefit supplement that has been issued to FAP recipients. Even in cases in which the group was not eligible for

any FAP benefits, MDHHS cannot recoup this 15% FAP benefit increase. Since MDHHS failed to show that it excluded that federal supplement from the calculation of the OI amounts for the OI period, MDHHS has not acted in accordance with policy in calculating Petitioner's OI 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 MDHHS did not act in accordance with Department policy when calculating the OI in Petitioner's FAP benefits.

DECISION AND ORDER

Accordingly, MDHHS' 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. Recalculate Petitioner's OI to exclude the 15% federal benefit increase on the FAP benefits issued to Petitioner between January 2021 and March 2021;
2. Notify Petitioner of its decision in writing.

DN/mp



Danielle Nuccio
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

Email Recipients:

MDHHS-Genesee-UnionSt-Hearings
MDHHS-Recoupment-Hearings
D. Sweeney
M. Holden
MOAHR
BSC2

First-Class Mail Recipient:

[REDACTED]
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