



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: April 29, 2022
MOAHR Docket No.: 22-001310
Agency No.: [REDACTED]
Petitioner: [REDACTED] [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 April 20, 2022. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Tiffany Flemings, Assistant Payments Worker, and Walita Randle, 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 was an ongoing recipient of FAP benefits for a group size of two, consisting of her daughter, [REDACTED] (Daughter), and herself.
2. On March 9, 2022, Petitioner submitted to MDHHS a change report, stating that Daughter is a full-time student at Michigan State University (MSU) and has not lived in her household since August 16, 2021. Daughter will return to Petitioner’s house for the summer months but lives at MSU during the school year (Exhibit A, pp. 22-23).
3. From November 1, 2021 to December 31, 2021, Petitioner received the maximum amount of FAP benefits for a group size of two, \$459.00 per month, plus an additional \$95.00 monthly supplement, totaling \$554.00 per month in FAP benefits for a group size of two (Exhibit A, p. 15).

4. From January 1, 2022 to February 28, 2022, Petitioner received \$459.00 monthly, the maximum amount of FAP benefits for a group size of two (Exhibit A, p. 15).
5. On March 11, 2022, MDHHS issued a Notice of Overissuance to Petitioner informing her that MDHHS had determined that she received a Client Error Overissuance from November 1, 2021 to February 28, 2022 in the amount of \$1,026.00 because she failed to timely report Daughter was out of her household (Exhibit A, pp. 4-9).
6. On an unknown date, MDHHS received a hearing request from Petitioner to dispute MDHHS' recoupment of overissued FAP benefits due to client error.

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, Petitioner disputes MDHHS' recoupment of overissued FAP benefits due to client error.

Petitioner expressed concern that she is required to update when Daughter is out of her household because Daughter only lives at MSU during the school year and returns to Petitioner's home during holidays and the summer break. FAP budget calculations require the consideration of the group size. MDHHS determines who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (October 2020), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation.

A person who is temporarily absent from the group is considered living with the group. A person's absence is temporary if all of the following are true:

- The person's location is known.
- The person lived with the group before an absence (newborns are considered to have lived with the group).
- There is a definite plan for return.
- **The absence has lasted or is expected to last 30 days or less.**

- Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home.

BEM 212, p. 3 (Emphasis added).

In this case, since Daughter was out of Petitioner's home longer than 30 days, she is not considered "temporarily absent" from the FAP group and is no longer an eligible group member during the time she lives at MSU. Therefore, MDHHS properly concluded that Petitioner should have only been issued FAP benefits for a group size of one.

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. A client error OI 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. 6. 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. BAM 700, p. 4. Here, MDHHS contends that Petitioner failed to timely report when Daughter no longer lived in her household, therefore she was overissued benefits for a group size of two when her household should have been issued benefits for a group size of one. Petitioner disputes that the OI was due to client error, and states that the OI occurred due to agency error because she made attempts to report that Daughter lived at and attended MSU, but she has communication issues with her caseworker. However, Petitioner was unable to present any evidence to support that these phone calls were made or that she submitted the required documentation timely to MDHHS. Without evidence to the contrary, the OI is concluded to be due to client 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, pp. 4-6; BAM 715 (October 2017), pp. 6-7. 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. 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 715, pp. 4-6. MDHHS testified that since this change in group size resulted in a benefit decrease, they applied the "10 10 12 rule" to determine the start of the OI period. Meaning, 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 (November 2021), 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 (November 2021), pp. 7, 12. Here, Petitioner reported Daughter did not live in the household as of August 16, 2021. Therefore, MDHHS properly determined the start of the overissuance period to be November 1, 2021. Petitioner did not report that Daughter lived at MSU until March 9, 2022, at which time MDHHS

updated her FAP group size. MDHHS properly ended the OI period February 28, 2022. Therefore, MDHHS did act in accordance with policy in determining the OI period.

MDHHS then calculated the OI total for this period by calculating what Petitioner's FAP budget would have been for a group size of one. MDHHS presented a benefit issuance summary for the overissuance period, which showed that Petitioner received the maximum amount of benefits for a group size of two each month, as required by the pandemic policy. In November 2021 and December 2021, Petitioner also received an additional non-recoupable 15% benefit increase amount and a recoupable \$95.00 each month. These three amounts total Respondent's actual benefit amount. See Exhibit A, p. 15. In calculating the overissuance amount, MDHHS removed Daughter from Petitioner's FAP group and determined that Petitioner would still be eligible to receive FAP benefits for a group size of one (see Exhibit A, pp. 18-21). MDHHS then subtracted the correct amount of benefits from the actual benefit amount to determine the overissuance amount. Again, the amount of the OI is the benefit amount the group actually received minus the amount the group *was eligible to receive*. BAM 700, pp. 4-6; BAM 715, pp. 6-7 (Emphasis added). Here, the maximum amount of benefits for a group size of two was \$459.00 per month. The maximum amount of benefits for a group size of one was \$250.00 per month. RFT 260 (October 2021), p. 1. MDHHS seeks to also recoup the \$95.00 monthly supplement that Petitioner received in November 2021 and December 2021. However, since Petitioner was eligible to receive FAP benefits during these months, she was eligible to receive that \$95.00 supplement, even if Daughter was not included in her FAP group. Since policy states that the OI amount is calculated by subtracting the amount that Petitioner was eligible to receive, and Petitioner was still eligible to receive the \$95.00 pandemic supplement, MDHHS is not entitled to recoup that supplement. Petitioner received \$1,836.00 total during the OI period for a group size of two (Actual Benefit Amount). Petitioner was eligible to receive \$1,000.00 during the OI period for a group size of one (Correct Benefit Amount). MDHHS then subtracts the Correct Benefit Amount from the Actual Benefit Amount to determine the OI amount for each month. Therefore, MDHHS is entitled to recoup \$836.00 in OI benefits from Petitioner.

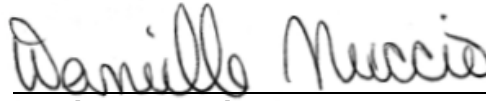
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that while MDHHS acted in accordance with policy in determining that Petitioner was overissued benefits, they did not act in accordance with Department policy when it calculated the OI amount that they are entitled to recoup.

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. MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a FAP OI in the amount of \$836.00, less any amounts already recouped/collected for the OI period;
2. Notify Petitioner of its decision in writing.



Danielle Nuccio
Administrative Law Judge

DN/mp

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-Wayne-18-Hearings
MDHHS-Recoupment-Hearings
D. Sweeney
M. Holden
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BSC4

First-Class Mail Recipient:

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[REDACTED] MI [REDACTED]