



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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Date Mailed: May 31, 2022  
MOAHR Docket No.: 22-001857  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

**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 hearing was held via telephone conference line on May 25, 2022. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Latoi Patillo, recoupment specialist.

**ISSUES**

The issue is whether MDHHS established against Petitioner a recipient claim for allegedly over-issued Food Assistance Program (FAP) benefits

**FINDINGS OF FACT**

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. From June 5, 2020, through at least March 2021, Petitioner received income from ██████████ (hereinafter, "Employer").
2. From June 2020 through March 2021, Petitioner received at least \$████████ in monthly income from Employer.
3. On June 11, 2020, Petitioner electronically applied for FAP benefits and reported no household income.
4. On June 17, 2020, MDHHS mailed a Notice of Case Action approving Petitioner for ongoing FAP benefits based on \$0 income. Boilerplate stated that clients are to report income changes to MDHHS within 10 days.

5. From June 2020 through March 2021, Petitioner received \$3,916 in potentially recoupable FAP benefits based on \$0 employment income. \$168 of the benefits issued to Petitioner were not recoupable under federal law.
6. As of March 2021, Petitioner had not reported to MDHHS income from Employer.
7. On August 10, 2021, Petitioner's case was referred to the recoupment unit.
8. On February 8, 2022, MDHHS calculated that Petitioner received an overissuance (OI) of \$4,084 in FAP benefits from June 2020 through March 2021 due to a failure to timely report income from Employer.
9. On February 8, 2022, MDHHS sent Petitioner a Notice of Overissuance stating that Petitioner received \$4,084 in over-issued FAP benefits from June 2020 through March 2021 due to client error.
10. On April 22, 2022, Petitioner requested a hearing to dispute the alleged OI.
11. On May 25, 2022, during an administrative hearing, MDHHS reduced its requested claim to \$3,916

### **CONCLUSIONS OF LAW**

The 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 the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute MDHHS's attempt to establish a recipient claim. Exhibit A, pp. 4-5. A Notice of Overissuance dated February 8, 2022, alleged that Petitioner received \$4,084 in over-issued FAP benefits from June 2020 through March 2021 due to client-error. Exhibit A, pp. 6-11.

During the hearing, MDHHS acknowledged that its requested claim improperly included \$168 in FAP benefits that are not recoupable under federal regulations.<sup>1</sup> MDHHS accordingly reduced its requested claim by \$168. Based on MDHHS's partial withdrawal, the MDHHS request to establish a claim of \$168 from a requested claim of \$4,084 will be dismissed. MDHHS is left with a potential FAP-OI claim of \$3,916.

An OI is the benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 2018) pp. 1-2. When a client group receives more benefits

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<sup>1</sup> Federal law prohibits the recoupment of monthly 15% supplements issued to clients beginning January 2021. Consolidated Appropriations Act, Pub. Act 116-20, 2021, Sec 702(b)(4).

than it is entitled to receive, MDHHS must attempt to recoup the OI. *Id.* Recoupment is an MDHHS action to identify and recover a benefit OI. *Id.* A claim is the resulting debt created by an OI of benefits. *Id.*

Federal regulations refer to OIs as “recipient claims” and mandate states to collect them. 7 CFR 273.18(a). Recipient claims may be caused by agency error, unintentional recipient error, and intentional program violations. 7 CFR 273.18(b). MDHHS may pursue FAP-related client errors when they exceed \$250. BAM 715 (October 2017) p. 7.

MDHHS alleged that Petitioner received an OI of FAP benefits after failing to timely report income from Employer. MDHHS presented TheWorkNumber documents listing Petitioner’s pay dates and gross wages from Employer. Exhibit A, pp. 37-45. The documents verified the following monthly wage totals for Petitioner:

June 2020	\$ [REDACTED]	January 2021	\$ [REDACTED]
July 2020	\$ [REDACTED]	February 2021	\$ [REDACTED]
August 2020	\$ [REDACTED]	March 2021	\$ [REDACTED]
September 2020	\$ [REDACTED]		
October 2020	\$ [REDACTED]		
November 2020	\$ [REDACTED]		
December 2020	\$ [REDACTED]		

After discovering Petitioner’s income, MDHHS referred Petitioner’s case to the recoupment unit on August 10, 2021. Exhibit A, p. 61. Recoupment staff completed FAP-OI budgets from June 2020 through March 2021 demonstrating how an OI was calculated. Exhibit A, pp. 16-36. Recoupable FAP issuances totaling \$3,916 were taken from documentation listing Petitioner’s past issuances. Exhibit A, pp. 12-15. A recoupment specialist credibly testified that Petitioner’s group members, income, and expenses were unchanged from the original FAP budgets other than adding Petitioner’s income from Employer. For all alleged FAP-OI months, MDHHS factored Petitioner’s actual gross income from Employer.<sup>2</sup> MDHHS factored Petitioner’s wages as untimely reported resulting in a 20% credit for timely reported employment income not being applied. Using the procedures set forth in BEM 556 for determining FAP eligibility, Petitioner’s net income or gross income exceeded the corresponding limit all months.<sup>3</sup> Thus, all \$3,916 in potentially recoupable FAP benefits were over-issued.

MDHHS alleged that the OI was caused by Petitioner’s failure to report income. Petitioner’s application dated June 11, 2020 reported no employment income, no disability income, and no household income. Exhibit A, pp. 55-60. Records from Employer indicated that

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<sup>2</sup> Factoring gross wages is compliant with employment income policy (see BEM 501) and factoring gross child support is compliant with unearned income policy (see BEM 503). Also, factoring actual income is compliant with policy directing how to calculate an OI based on client error (see BAM 715).

<sup>3</sup> See BEM 556 for how income eligibility for FAP benefits is calculated. See RFT 250 for net and gross income limits.

Petitioner began receiving weekly wages June 5, 2020. The evidence established that Petitioner did not report income from Employer before the end of the OI period.<sup>4</sup>

Petitioner testified that her income should not be construed as wages because she did not receive income from Employer for performing employment. Petitioner's testimony may be true in part. During the OI period, TheWorkNumber records listed employment hours for Petitioner on June 5, 2020, July 24, 2020, October 2, 2020, and March 15, 2021; for all other weeks, Petitioner's hours were zero. However, the distinction is irrelevant. Petitioner's income from Employer was employment income regardless of whether she worked for them or not. Wages includes. Wages include an employee's regular wages paid during a vacation or illness. BEM 501 (July 2017) p. 6.

The evidence established that Petitioner failed to report employment income to MDHHS. The evidence further established that Petitioner received \$3,916 in over-issued FAP benefits due to failing to report income. Thus, MDHHS established against Respondent a claim of \$3,916 caused by client error.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS partially withdrew a claim against Petitioner for over-issued FAP benefits. The MDHHS actions to establish against Petitioner a recipient claim of \$168 from a requested claim of \$4,084 is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established against Petitioner a recipient claim of \$3,916 for FAP benefits over-issued from June 2020 through March 2021 due to client-error. The MDHHS actions to establish against Petitioner a recipient claim of \$3,916 from a requested claim of \$4,084 due to client error is **AFFIRMED**.

CG/mp



**Christian Gardocki**

Administrative Law Judge

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<sup>4</sup> Petitioner should have also been aware of the responsibility to report income from a Notice of Case Action dated June 17, 2020. The notice included boilerplate that clients are to report income changes to MDHHS within 10 days. Exhibit A, pp. 46-51.

**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-Oakland-DistrictII-Hearings  
MDHHS-Recoupment-Hearings  
D. Sweeney  
M. Holden  
MOAHR  
BSC4

**First-Class Mail Recipient:**

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