



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: August 25, 2022  
MOAHR Docket No.: 22-003221  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 August 22, 2022. Petitioner participated and was unrepresented. Hasan Salman of Salman Immigration and Translation participated as an Arabic--English translator. The Michigan Department of Health and Human Services (MDHHS) was represented by Walita Randle, recoupment specialist, and Rhonda Jones-Dukes, manager.

**ISSUE**

The issue is whether MDHHS established against Petitioner a recipient claim for an alleged over-issuance (OI) of 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. On July 12, 2017, Petitioner, her spouse, and two children ([REDACTED]) entered the United States. The basis of U.S. entry was being the child/grandchild of a legal permanent resident alien.
2. On November 12, 2017, Petitioner's children (M [REDACTED]) entered the United States. The basis of U.S. entry was being the grandchild of a legal permanent resident alien.
3. As of April 2021, Petitioner was a recipient of FAP benefits with a group that included her spouse and four children. All household members were at least 18 years of age.

4. From May through September 2021, Petitioner received \$ [REDACTED] in FAP benefits based on a group that included herself, her spouse, and four adult children.
5. On April 21, 2022, Petitioner's case was referred to a recoupment specialist.
6. On May 5, 2022 MDHHS calculated that Petitioner received \$ [REDACTED] in FAP benefits from May through September 2021 due to MDHHS's failure to properly factor the alien status of Petitioner's group members.
7. On May 6, 2022, MDHHS mailed a Notice of Overissuance stating that Petitioner received \$ [REDACTED] in over-issued FAP benefits from May through September 2021 due to agency error.
8. On [REDACTED], 2022, Petitioner requested a hearing to dispute the alleged OI of FAP benefits.

### **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 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 for allegedly over-issued FAP benefits. Exhibit A, pp. 4-5. A Notice of Overissuance dated May 6, 2022, stated that Petitioner received \$ [REDACTED] in over-issued FAP benefits from May through September 2021 due to agency error. Exhibit A, pp. 10-11.

An OI is the benefits issued to a 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 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 from an OI of benefits. *Id.*

Federal regulations refer to OIs of FAP benefits as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a). Recipient claim amounts not caused by trafficking are calculated by determining the correct amount of benefits for each month there was an OI and subtracting the correct issuance from the actual issuance.<sup>1</sup> CFR 273.18(c)(1).

---

<sup>1</sup> Additionally, MDHHS is to subtract any benefits that were expunged (i.e., unused benefits which eventually expire from non-use). There was no evidence that any of the benefits issued to Petitioner were expunged.

The types of recipient claims are those caused by agency error, unintentional client error, and IPV. 7 CFR 273.18(b). MDHHS may pursue FAP-related agency errors when they exceed \$250. BAM 705 (October 2018), p. 1. Thus, MDHHS may establish a claim against Petitioner if the established OI exceeds \$250.

Clients requesting hearings disputing OIs caused by agency error typically contend that they should not be required to repay an OI caused by MDHHS's error. Such an argument is based in equity; in other words, it is unjust to have a client repay benefits over-issued only because of MDHHS's fault. Federal regulations and MDHHS policy each authorize recoupment of FAP benefits even when caused by MDHHS's error. Thus, MDHHS is not barred from establishing a claim against Petitioner simply because it caused the OI.

For agency errors, the OI period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the recoupment specialist, whichever period is later. *Id.*, p. 5. In the present case, MDHHS seeks a claim for an OI period beginning May 2021. Petitioner's case was referred to a recoupment specialist on April 21, 2022. Exhibit A, p. 58. Going back 12 months from the referral date Allows MDHHS to pursue an agency-caused claim against Petitioner from May through September 2021.

The basis of the alleged OI was ineligibility due to citizenship/alien status. MDHHS alleged that all six persons who received FAP benefits during the alleged OI period were ineligible.

For FAP benefits, a person must be a U.S. citizen or have an acceptable alien status. BEM 225 (October 2019) p. 1. Any of the following persons are considered to have an acceptable alien status:

- United States citizens (includes those born in Puerto Rico)
- born in Canada and at least 50% American Indian
- member of American Indian tribe
- qualified military alien, spouse or child of qualified military alien,
- refugee under Section 207
- asylee under Section 208
- Cuban/Haitian entrant
- Amerasian
- victim of trafficking
- permanent resident alien with class code of RE, AM, AS, SI or SQ
- permanent resident alien and has I-151
- deportation withheld (under certain conditions)
- granted conditional entry under 203(a)(7)
- paroled under 212(d)(5) for at least one year (under certain conditions)
- battered aliens, if more than five years in the United States
- permanent resident alien with a class code other than RE, AM or AS, if in the United States for longer than 5 years. *Id.*, pp. 33-35.

Persons with a class code other than RE, AM or AS who entered the United States after August 22, 1996, may be eligible for FAP benefits for their first five years in the United States if any of the following circumstance are applicable:

- U.S. entry before August 22, 1996
- has 40 countable Social Security credits
- age 65 or older as of August 22, 1996, and was residing in United States on August 22, 1996
- Hmong or Laotian (with other requirements)
- currently blind or currently disabled
- under 18 years of age. *Id.*, pp. 32-34.

MDHHS presented documentation listing Petitioner's FAP group members as of May 2021. The benefit group included Petitioner, her spouse, and four children. Exhibit A, p. 39. Presumably, Petitioner's benefit group members remained unchanged through the end of the alleged OI period in September 2021.

MDHHS presented the green cards of all six members of Petitioner's FAP group. Exhibit A, pp. 27-37. All six persons entered the United States no earlier than July 12, 2017; thus, all members were in the United States for less than five years as of the alleged OI period. All six persons were born in [REDACTED]; [REDACTED] is not a country suggesting eligibility despite less than five years in the United States. All six persons entered the United States as either a child or a grandchild of a lawful permanent resident alien; the basis for U.S. entry does not create FAP eligibility despite less than five years in the U.S. All six persons had birthdates which were more than 18 years before the beginning of the alleged OI period; thus, the exception for children is not met. Given the evidence, all six persons were ineligible to receive FAP benefits due to failing to meet citizenship/qualified alien requirements.

MDHHS presented FAP-OI budgets from May through September 2021 demonstrating how an OI was calculated. Exhibit A, pp. 21-26. Actual FAP benefits totaling \$ [REDACTED] were based on documentation listing Petitioner's FAP issuances from May through September 2021.<sup>2</sup> Exhibit A, pp. 19-20. Each FAP-OI budget factored a group size of zero. Based on a benefit group of zero, Petitioner's group was entitled to \$0 FAP benefits from May through September 2021.

Petitioner testified that she and her family have experienced illness and unemployment. Petitioner's testimony is not relevant to whether an OI occurred.

The evidence established that Petitioner received an OI of \$ [REDACTED] in FAP benefits from May through September 2021 due to agency-error. Though MDHHS was fully responsible for causing the OI, the \$ [REDACTED] claim sought by MDHHS must be affirmed.

---

<sup>2</sup> Petitioner received more than \$5,099 in FAP benefits during the alleged OI period. However, MDHHS properly excluded 15% supplements issued through June 2021 that are not recoupable under federal regulations. Consolidated Appropriations Act, Pub. Act 116-20, 2021, Sec 702(b)(4).

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a claim of \$ [REDACTED] for FAP benefits over-issued to Petitioner from May through September 2021 due to agency error. The MDHHS actions to establish against Petitioner a recipient claim are **AFFIRMED**.

CG/mp



**Christian Gardocki**

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-Electronic Mail :**

**DHHS**  
MDHHS-Recoupment-Hearings  
MDHHS-Wayne-19-Hearings  
D. Sweeney  
M. Holden  
MOAHR  
BSC4

**Via-First Class Mail :**

**Petitioner**  
[REDACTED]  
[REDACTED], MI [REDACTED]