



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: March 15, 2023  
MOAHR Docket No.: 22-006345  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Linda Jordan**

### **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 on March 6, 2023 via teleconference. Petitioner appeared and represented herself. Anna Peterson, Recoupment Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

### **ISSUE**

Did MDHHS properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits due to an agency error?

### **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.
2. On November 14, 2018, MDHHS sent Petitioner a Notice of Case Action, approving FAP benefits for a household of five from November 1, 2018 through October 31, 2019 at a rate \$██████████ per month (Exhibit A, p. 29). The FAP budget was based on \$0.00 in earned income and indicated that changes affecting eligibility must be reported to MDHHS within ten days (Exhibit A, pp. 30-32).
3. On or about February 25, 2019, household member, ██████████ (*hereinafter* "Household Member"), began working at ██████████ (Employer), receiving his first paycheck on March 8, 2019 (Exhibit A, p. 33).

Household member continued working at Employer throughout the OI period (Exhibit A, pp. 33-35).

4. On or about April 4, 2019, Petitioner reported Household Member's income to MDHHS, however, MDHHS failed to process the reported change in a timely manner (Exhibit A, p. 1).
5. On November 17, 2022, MDHHS sent Petitioner a Notice of Overissuance indicating that Petitioner was overissued FAP benefits in the amount of \$4,277.00 during the period of May 1, 2019 to October 31, 2019 (Exhibit A, p. 6). The notice stated that the OI was due to agency error for failing to budget household earned income (Exhibit A, p. 6).
6. On November 29, 2022, Petitioner requested a hearing regarding the alleged FAP OI (Exhibit A, p. 3).

### **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. MDHHS 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, MDHHS determined that Petitioner received an OI of FAP benefits due to an agency error because it failed to properly budget household income in a timely manner. Petitioner requested a hearing to dispute the OI.

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), 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 720, p. 8; BAM 715 (October 2017), p. 6. An OI can be caused by client error, agency error, or an intentional program violation. BEM 700, pp. 5-9. An agency error is caused by incorrect action by MDHHS staff or Department processes. BEM 700, p. 5. Agency errors are not pursued if less than \$250.00 per program. *Id.* Conversely, a client error occurs when the OI was due to the client giving incorrect or incomplete information to MDHHS. BEM 700, p. 7.

To calculate a client's FAP benefit rate, MDHHS must consider all countable earned and unearned income. BEM 500 (April 2022), pp. 1-5. Earned income refers to income

received from another person or organization for duties that were performed for remuneration or profit. BEM 500, p. 4. Wages from employment include salaries, tips, commission, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. BEM 501 (July 2022), pp. 6-7.

At the hearing, MDHHS testified that it did not properly budget Household Member's earned income from Employer, which led to the OI. MDHHS introduced evidence showing that Household Member began working at Employer on or about February 25, 2019, receiving his first paycheck on March 8, 2019 (Exhibit A, p. 33). Petitioner reported this income to MDHHS on or about April 4, 2019 (Exhibit A, p. 1). The record shows that Petitioner was a change reporter, meaning that she was required to report changes in eligibility factors to MDHHS within ten days. Although Petitioner reported this income late, MDHHS testified that it did not act on the reported change in a timely manner, and therefore, the OI resulted from agency error and not client error. MDHHS is required to pursue an OI based on agency error when the amount of the OI is \$250.00 or more. BEM 700, p. 5.

MDHHS introduced FAP budgets to show that Petitioner was overissued FAP benefits in the amount of \$4,277.00 from March 2019 through October 2019 (Exhibit A, pp. 15-27). The FAP OI budgets calculated Petitioner's FAP benefit rate after adding in the earned income from Household Member (Exhibit A, p. 16-27). For example, in May 2019, Petitioner received \$[REDACTED] in FAP benefits (Exhibit A, p. 14). After adding Household Member's income for that month, which MDHHS budgeted as \$[REDACTED] based on income received from Employer, the household was eligible for \$[REDACTED] in FAP benefits, creating a \$651.00 OI (Exhibit A, p. 15, 26-27). MDHHS completed this process for each month in the OI period and determined that Petitioner received an OI of FAP benefits in the amount of \$4,277.00. Petitioner did not dispute the amounts that MDHHS used for Household Member's income or any other aspect of the FAP OI budgets. Therefore, the record shows that MDHHS properly calculated the FAP OI amount.

At the hearing, Petitioner expressed concerns about paying the OI amount. For individuals who have active FAP benefits, MDHHS recoups the FAP OI amount by withholding a percentage of the monthly FAP allotment. BAM 725 (January 2021), p. 7. The standard administrative recoupment percentage is 10% for an OI resulting from agency error. *Id.*, p. 8. Thus, if Petitioner has active FAP benefits, the OI amount will be recouped by withholding 10% of the total FAP allotment each month. Individuals who do not have active benefits can pay OI balances by lump-sum or monthly cash payments. BAM 725, p. 9. Collection actions can also be suspended in certain circumstances. *Id.*, and MDHHS can compromise (reduce or eliminate) an OI if it is determined that a household's economic circumstances are such that the OI cannot be paid within three years. *Id.*, pp. 14-16. A request for a policy exception must be made from the Recoupment Specialist to the Overpayment, Research and Verification Section office outlining the facts of the situation and the client's financial hardship. *Id.* The manager of the MDHHS Overpayment, Research and Verification Section has final authorization on the determination for all compromised claims. *Id.*, pp. 16-17.

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 acted in accordance with Department policy when it determined that Petitioner received an OI of FAP benefits due to agency error.

**DECISION AND ORDER**

Accordingly, MDHHS' decision is **AFFIRMED**.



LJ/tm

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**Linda Jordan**  
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**

Christina Chamberlain  
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**MDHHS-Cheboygan-  
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**DHHS Department Rep.**

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**Interested Parties:**

M. Holden  
D. Sweeney  
BSC1

**Via-First Class Mail :**

**Petitioner**

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