



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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[REDACTED] MI [REDACTED]

Date Mailed: May 23, 2023
MOAHR Docket No.: 23-002282
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 May 18, 2023, from Detroit, Michigan. Petitioner appeared for the hearing with her husband [REDACTED] and represented herself. The Department of Health and Human Services (Department) was represented by Jason Moris, Recoupment Specialist.

ISSUE

Did Petitioner receive a client error overissuance (OI) of Food Assistance Program (FAP) benefits that the Department 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.
2. In December 2021, Petitioner reported that her husband [REDACTED] had been laid off and was no longer earning income.
3. Petitioner's FAP benefits were adjusted based on the household having [REDACTED] in earned income.
4. In December 2022, in connection with a redetermination, the Department became aware that Petitioner's husband had returned to work partially in February 2022, and had returned fully to work in April 2022. The Department completed an Overissuance Referral, as it determined that the income was unreported and was not budgeted or considered in the household FAP eligibility. (Exhibit A, p. 60)

5. The Department obtained information from the Work Number showing that Petitioner's husband received his last paycheck prior to being laid off on December 31, 2021, and returned to work in February 2022, earning his first paycheck on February 7, 2022. (Exhibit A, pp. 40-44)
6. On or around February 23, 2023, the Department sent Petitioner a Notice of Overissuance informing her that she received a client error caused OI of FAP benefits in the amount of \$10,726, for the period of April 1, 2022, through February 28, 2023, because she failed to timely report her husband's return to employment and income, which resulted in excess income and ineligibility for FAP benefits. (Exhibit A, pp. 6-11)
7. On or around March 20, 2023, Petitioner requested a hearing disputing the Department's actions. (Exhibit A, pp.3-5)

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, on February 23, 2023, the Department sent Petitioner a Notice of Overissuance informing her that she received a client error caused OI of FAP benefits in the amount of \$10,726, for the period of April 1, 2022, through February 28, 2023, because she failed to timely report her husband's return to employment with and income from Employer, which resulted in excess income and ineligibility for FAP benefits.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (July 2020), pp. 9-12; 7 CFR 273.12(a)(1); 7 CFR 273.21. Additionally, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (October 2018), p. 1. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or inaccurate information to the Department. BAM 700, pp. 4-6. An agency error OI is caused by

incorrect actions by the Department, including delayed or no action, which result in the client receiving more benefits than they were entitled to receive. BAM 700, pp. 4-6. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 715 (October 2017), p. 6; BAM 705 (October 2018), p. 6.

In this case, the Department representative asserted that while Petitioner reported that her husband was laid off in December 2021, Petitioner failed to timely report that he returned to work and was receiving income from Employer within 10 days of receiving his first paycheck on February 7, 2022. The Department representative testified that in December 2022, the Department became aware through a redetermination that Petitioner's husband had returned to work and thus, the Department verified his income and employment through the Work Number, which confirmed that Petitioner's husband returned to employment on January 29, 2022, and received his first paycheck on February 7, 2022.

Petitioner testified that she verbally reported to her caseworker that her husband returned to work and subsequently mailed a change report to the Department in April 2022. Petitioner asserted that she called her caseworker more than once and because she received no call back, did not think there was any problem with her FAP benefits. Petitioner testified that she was not aware that the Department had not received the change report and could not recall the exact date it was mailed. Petitioner also did not have a copy of the change report or any documentation to confirm that the income was timely reported to the Department. Petitioner asserted that she attempted to get phone records to show that calls were made to the Department to report the income. (Exhibit 1)

Despite Petitioner's testimony at the hearing, because the Department had no record of Petitioner timely reporting the income, the Department properly determined that the OI in this case was due to client error.

Due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that 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 2020-15 (March 2020). The State of Michigan issued EA from April 2020 to October 2022. ESA Memo 2022-39 (January 2022). COVID-19 EA were approved for every month during the alleged OI period of April 2022 to February 2023. In addition, beginning in May 2021, MDHHS began issuing a minimum \$95 supplement to all FAP households, including households that were already receiving the maximum allotment for their household size. ESA Memo 2021-22 (May 2021). Wrongfully issued EA are recoupable by MDHHS if the FAP household is not eligible for any FAP benefits during the month at issue.

The Department presented a benefit summary inquiry and an issuance summary to establish that during the period between April 2022 and February 2023 it issued

\$10,726 in recoupable FAP benefits to Petitioner. The benefit summary inquiry shows the months in the OI period include an ongoing monthly payment and one supplemental \$95 payment. The Department representative explained that in calculating the OI, it considered only the ongoing monthly allotment issued to Petitioner and the \$95 EA supplements referenced above. The Department asserted that during the OI period, Petitioner was eligible for \$0 in FAP benefits.

In support of its OI case, the Department presented the Work Number, verifying that Petitioner had earnings from Employer beginning on or around February 7, 2022. It was also established that in consideration of Petitioner's first pay date, the Department properly determined that the first month in the OI period would be April 2022, as the Department is to apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period. The Department also presented FAP OI budgets for each month in the overissuance period showing how Petitioner's earned income was calculated each month and how the total OI amount was determined. The Recoupment Specialist testified that no changes were made to the budgets other than the inclusion of the earned income. Although Petitioner noted that the first name identified on the FAP OI budgets was incorrectly inputted as [REDACTED] all other information on the budgets including the case number, Petitioner's husband's name, and pay amounts/pay dates inserted from the Work Number are all correct. Thus, this is determined to be a harmless typographical error.

Upon review, after including Petitioner's husband's unreported earned income in the calculation of Petitioner's household FAP eligibility, Petitioner's group was eligible to receive \$0, in FAP benefits during the period of April 2022 through February 2023, as Petitioner's income exceeded the income limit based on her four-person group size. Petitioner argued that if the Department was aware in December 2022 that her husband had earnings, full benefits should not have been issued to Petitioner after that time and any OI is not her fault. However, as referenced above, the Department is entitled to recoup OIs due to agency error as well and would still be entitled to recoupment of the overissued FAP benefits from January 2023 and February 2023.

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 the Department acted in accordance with Department policy when it established a client error OI of FAP benefits in the amount of \$10,726 from April 2022 to February 2023.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

The Department is ORDERED to initiate recoupment and/or collection procedures for a \$10,726 client error FAP OI in accordance with Department policy, less any amount that has already been recouped/collected.

ZB/ml



Zainab A. Baydoun
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

Yaita Turner

Oakland County Pontiac-Woodward Dist.

51111 Woodward Ave 5th Floor

Pontiac, MI 48342

MDHHS-Oakland-District-IV-Hearings@michigan.gov

DHHS Department Rep.

Overpayment Establishment Section (OES)

235 S Grand Ave, Ste 811

Lansing, MI 48909

MDHHS-RECOUPMENT-HEARINGS@Michigan.gov

Interested Parties

BSC4

M Holden

D Sweeney

MOAHR

Via First Class Mail:

Petitioner

[REDACTED]

[REDACTED]

[REDACTED] MI [REDACTED]