



GRETCHEN WHITMER  
GOVERNOR

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

MARLON I. BROWN, DPA  
ACTING DIRECTOR



Date Mailed: August 8, 2023  
MOAHR Docket No.: 23-002773  
Agency No.: [REDACTED]  
Petitioner: [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.

On June 22, 2023, a hearing was scheduled in the above-captioned matter. Petitioner failed to appear at the scheduled hearing and an Order of Dismissal was issued. Petitioner then established good cause for failure to participate in the scheduled hearing and an Order Vacating Dismissal was issued on July 7, 2023.

After due notice, a telephone hearing was held on July 27, 2023. Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Jody Anderson, Recoupment Specialist.

### **ISSUE**

Did MDHHS properly determine that Petitioner had been overissued Food Assistance Program (FAP) benefits due to client 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 for a group size of one.
2. On April 1, 2019, MDHHS issued a Notice of Case Action to Petitioner, informing her that she was eligible for FAP benefits for a group size of one, based upon \$0.00 earned income, and reminding her of her obligation to report changes in household circumstances to MDHHS within ten days. A blank Change Report form

was provided with the Notice of Case Action to facilitate the reporting of any future changes to MDHHS timely (Exhibit A, pp. 57-62).

3. On June 30, 2019, Petitioner began to work at [REDACTED] (Employer), receiving her first paycheck on July 12, 2019. As of April 14, 2023, Petitioner was still actively employed (Exhibit A, pp. 33-40).
4. On March 2, 2020, MDHHS received a redetermination of benefits from Petitioner in which she reported that she has earned income from employment with Employer (Exhibit A, pp. 45-56).
5. From September 1, 2019 through April 30, 2020, Petitioner was issued \$1,455.00 in FAP benefits for a group size of one (Exhibit A, pp. 14-15).
6. On April 26, 2023, MDHHS received employment information from Employer (Exhibit A, p. 33-40).
7. On May 2, 2023, MDHHS issued a Notice of Overissuance to Petitioner informing her that she was overissued FAP benefits from September 1, 2019 through April 30, 2020 in the amount of \$1,455.00. The overissuance (OI) was deemed due to client error because Petitioner did not timely report her earned income to MDHHS (Exhibit A, pp. 8-13).
8. On May 17, 2023, Petitioner submitted a hearing request to dispute that she was overissued FAP benefits (Exhibit A, pp. 4-5).

### **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.

Petitioner requested a hearing disputing that she must repay overissued benefits due to client error. MDHHS contends that Petitioner was overissued FAP benefits from September 1, 2019 through April 30, 2020 (OI period) for failing to timely report earned income from Employer.

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 she began to work for Employer on June 30, 2019. Petitioner testified that she did report her employment timely by mailing the information to MDHHS then by dropping off the information to the local office. Petitioner was unable to present any evidence to support that this information was submitted. 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. In this case, MDHHS testified that 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 (October 2022), 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 (October 2022), pp. 7, 12. Here, Petitioner began to work for Employer on June 30, 2019. Therefore, MDHHS properly determined the start of the overissuance period to start September 1, 2019. Upon receiving Petitioner’s redetermination of benefits on March 12, 2020, MDHHS updated Petitioner’s household income amount, ending the OI period on April 30, 2020. MDHHS properly determined the OI period.

MDHHS then calculated the OI total for this period by calculating what Petitioner’s FAP budget would have been had her earned income from Employer been included in her household budget. MDHHS used the income information received directly from Employer to include in Petitioner’s budget (see Exhibit A, pp. 33-40). MDHHS testified that the only change in Petitioner’s FAP budget when calculating the OI versus the original budget was including her earned income information.

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 all 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; updated December 2020). Pursuant to policy, if a FAP household was eligible for any amount of FAP benefits while the EA were in place, it would be eligible for the maximum FAP allotment based on their group size. This policy ended, effective March 1, 2023 (ESA Memo 2023-10).

In this case, in March 2020 and April 2020, MDHHS determined that Petitioner was eligible to receive for some FAP benefits. Since Petitioner was eligible for some benefits during these months, she was entitled to receive the maximum amount of FAP benefits

for her group size, pursuant to the ESA Memo. However, MDHHS included these months in the OI amount that they are attempting to recoup from Petitioner. Therefore, MDHHS did not act in accordance with policy when determining Petitioner's OI amount.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when calculating the OI in Petitioner's FAP benefits.

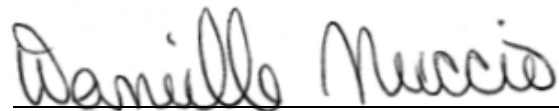
### **DECISION AND ORDER**

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. Recalculate Petitioner's OI to determine what, if any, FAP benefits are recoupable during the OI period;
2. Notify Petitioner of its decision in writing.

DN/dm



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**Danielle Nuccio**

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**  
Dan Vendzuh  
Otsego County DHHS  
**MDHHS-Otsego-  
Hearings@michigan.gov**

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**MOAHR**

**Via-First Class Mail :**

