



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 1, 2023
MOAHR Docket No.: 23-003337
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. After due notice, a telephone hearing was held on July 24, 2023. The Petitioner was represented by his wife and household member, [REDACTED]. 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 benefits for a group size of two, consisting of his wife and himself.
2. On April 1, 2022, MDHHS issued a Notice of Case Action to Petitioner, informing him that he was eligible for FAP benefits for a group size of two based upon \$0.00 earned income and reminding him of his 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. 58-65).

3. On May 9, 2022, Petitioner began to work at [REDACTED]. (Employer), receiving his first paycheck on May 26, 2023. As of May 31, 2023, Petitioner was still actively employed (Exhibit A, pp. 43-52).
4. On July 19, 2022, Petitioner submitted a Change Report to MDHHS, reporting that his address had changed (Exhibit A, pp. 54-55).
5. On May 31, 2023, MDHHS received employment information from Petitioner and Employer (Exhibit A, p. 53).
6. From March 1, 2023 through April 30, 2023, Petitioner was issued \$1,032.00 in FAP benefits for a group size of two, including pandemic supplements (Exhibit A, pp. 13-17).
7. On June 6, 2023, MDHHS issued a Notice of Overissuance to Petitioner informing him that he was overissued FAP benefits from March 1, 2023 through April 30, 2023 in the amount of \$618.00. The overissuance (OI) was deemed due to client error because Petitioner did not timely and properly report earned income to MDHHS (Exhibit A, pp. 7-12).
8. On June 20, 2023, Petitioner submitted a verbal hearing request to dispute that he was overissued FAP benefits (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.

Petitioner verbally requested a hearing disputing that he must repay overissued benefits due to client error¹. MDHHS contends that Petitioner was overissued FAP benefits from March 1, 2023 through April 30, 2023 (OI period) for failing to report earned income from Employer. Petitioner submitted a new FAP application and was approved for benefits, effective June 1, 2023 ongoing.

¹ Clients may verbally request hearings to dispute ongoing FAP eligibility. BAM 600 (March 2021) p. 2.

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 he began to work for Employer in May 2022. At the hearing, Petitioner's wife testified that throughout their history as benefit recipients, both Petitioner and she are diligent in reporting changes timely to MDHHS. In support of this contention, Petitioner's wife testified that on July 19, 2022, they submitted a Change Report to update their address with MDHHS. Petitioner's wife testified that Petitioner called MDHHS once he began working to report this income. However, Petitioner's wife was unable to present any evidence to support that this phone call was made or that Petitioner submitted documentation of his income timely to MDHHS. 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. The overissuance period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the recoupment specialist, whichever 12 month period is later. To determine the first month of the overissuance period for changes reported timely and not acted on by MDHHS, Bridges, MDHHS's internal database, allows time for the full standard of promptness (SOP) for change processing. BAM 715, pp. 4-6. MDHHS testified that since this change in group size resulted in a benefit decrease, 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 May 9, 2022. Therefore, MDHHS properly determined the start of the overissuance period to start March 1, 2023. MDHHS discovered that Petitioner had earned income in May 2023. Therefore, MDHHS acted in accordance with policy in determining the OI period.

MDHHS then calculated the OI total for this period by calculating what Petitioner's FAP budget would have been had his earned income from Employer been included in his household budget. MDHHS used the income information received directly from Employer to calculate in Petitioner's budget (see Exhibit A, pp. 45-52). MDHHS testified that the only change in Petitioner's FAP budget when calculating the OI versus the original budget was including his earned income information. A review of the FAP OI budgets shows that MDHHS properly recalculated Petitioner's gross income when income from Employer was included in the calculation of benefits for each month of the OI period (see Exhibit A, pp. 19-38). 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, Petitioner was eligible for some FAP benefits during the OI period, that being in July 2022, August 2022, September 2022, October 2022, November 2022, December 2022, January 2023, and February 2023. Since Petitioner was eligible for some FAP benefits in these months, the household was entitled to receive the maximum amount of FAP benefits for their group size, pursuant to the ESA Memos. Once this policy ended, Petitioner was only eligible to receive:

- March 2023: \$225.00 (correct benefit amount)
- April 2023: \$189.00 (correct benefit amount)

MDHHS then subtracts the Correct Benefit Amount from the Actual Benefit Amount to determine the OI amount for each month. Petitioner received \$516.00 each month of the OI period. The overissuance for each month is:

- March 2023: \$291.00 (overissuance amount)
- April 2023: \$327.00 (overissuance amount)

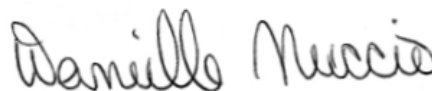
The overissuance totals to \$618.00. Therefore, MDHHS properly determined the OI amount.

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 acted in accordance with Department policy when it determined that Petitioner received an OI of FAP benefits in the amount of \$618.00 due to client error.

DECISION AND ORDER

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

DN/mp



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 :

Interested Parties

MDHHS-Recoupment-Hearings
MDHHS-Presquelsle-Hearings
D. Sweeney
M. Holden
MOAHR
BSC1

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
MI [REDACTED]