



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: July 27, 2023
MOAHR Docket No.: 23-003496
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 Authorized Hearing Representative (AHR) [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 agency error (AE)?

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 [REDACTED] 2022, Petitioner was admitted to a long-term care facility, which provides his meals. Petitioner remains living at the facility, without interruption, as of the hearing date (Exhibit A, pp. 22-24).
3. Petitioner timely reported this change in circumstances to MDHHS.
4. From August 1, 2022 through May 31, 2023, Petitioner was issued \$2,313.00 in FAP benefits for a group size of one, including pandemic supplements (Exhibit A, pp. 17-21).
5. On May 16, 2023, MDHHS issued a Notice of Overissuance to Petitioner informing him that he was overissued FAP benefits from August 1, 2022 through

May 31, 2023 in the amount of \$2,313.00. The overissuance (OI) was deemed due to agency error (AE) because MDHHS failed to update Petitioner's living arrangements and eligibility (Exhibit A, pp. 11-16).

6. On May 22, 2023, MDHHS received Petitioner's timely submitted hearing request to dispute that he 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.

In this case, Petitioner requested a hearing disputing that he must repay overissued benefits due to MDHHS error. AHR argues that Petitioner did not use any FAP benefits issued to him during the OI period and should not have to repay any benefits.

Petitioner entered a long-term care facility on [REDACTED] 2022. Petitioner's guardian, and AHR, testified that the facility provides Petitioner with all of his meals and Petitioner has remained in the facility since his admission date. Individuals must be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. CFR § 273.1(b)(7)(vi); BEM 265 (April 2018), p. 2; BEM 615 (October 2021), p. 1. Petitioner did not meet any exception to this policy to accept FAP benefits while residing in the facility. Petitioner properly and timely reported this change in circumstances to MDHHS. MDHHS testified that they failed to update this change timely. Since Petitioner did not meet criteria for FAP eligibility once he was admitted to the institution, MDHHS should not have issued him FAP benefits. Therefore, MDHHS properly concluded that Petitioner was overissued FAP benefits due to agency error.

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. 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. 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 705 (October 2018), pp. 1-6. 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. BAM 705, p. 5. In this case, the recoupment specialist testified that she started the OI period August 1, 2022 by applying the "10 10 12 Rule" from the start of Petitioner's admission to the facility on June 17, 2022. FAP recipients who are not simplified reporters are required to report starting or stopping employment and changes in circumstances that potentially affect eligibility or benefit amount within ten days of receiving the first payment reflecting the change. BAM 105 (April 2022), p. 12; 7 CFR 273.10(b)(1)(i). 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), p. 7, 12. While this is not how the start of the overissuance period is determined according to policy, this ultimately benefits Petitioner and will be considered a harmless error. MDHHS ended the overissuance period when Petitioner's FAP case was closed, May 31, 2023. MDHHS properly determined the overissuance period in this case.

Since Petitioner was not eligible to receive FAP benefits, all benefits issued to him were overissued. In reviewing the admitted Benefit Summary Inquiry, which shows the FAP benefits issued to Petitioner each month, MDHHS properly calculated the OI amount (see Exhibit A, pp. 17-21). Therefore, MDHHS properly determined the OI to be FAP benefits Petitioner was issued totaling \$2,313.00.

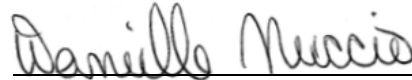
At the hearing, Petitioner expressed concerns about paying the OI amount. Individuals who do not have active benefits can pay OI balances by lump-sum or monthly cash payments. BAM 725 (January 2021), p. 9. Collection actions can also be suspended in certain circumstances. *Id.*, pp. 13-14. Additionally, 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.*, p. 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 (Send to: Overpayment Recovery and State Psychiatric Hospital Reimbursement Division Overpayment Research and Verification Section Suite 1011 235 S. Grand Ave P.O. Box 30037 Lansing, MI 48909). *Id.*, pp. 16-17. AHR was also advised that she may submit an Authorization to Remove FAP benefits from his Bridge Card and MDHHS may then recoup the unused FAP benefits.

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 \$2,313.00 due to agency 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-Crawford-Hearings

D. Sweeney

M. Holden

MOAHR

BSC1

Via-First Class Mail :

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
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Petitioner

[REDACTED]
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