



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
████████████████████
██████████, MI ██████████

Date Mailed: August 22, 2023
MOAHR Docket No.: 23-004314
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 August 21, 2023 via teleconference. Petitioner appeared and represented himself. Kathleen Zewatsky, 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 in the amount of \$██████████ 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 October 4, 2021, MDHHS sent Petitioner a Notice of Case Action approving FAP benefits for a household of three, effective November 1, 2021 through October 31, 2022 at a rate \$██████████ per month (Exhibit A, p. 23). 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. 24-27).
3. On October 20, 2021, Petitioner submitted a change report to MDHHS stating that he started employment at ██████████ (Employer) on October 11, 2021 (Exhibit A, p. 36). Petitioner reported working 40 hours per week and earning \$██████████ per hour paid biweekly (Exhibit A, p. 36).

4. From December 1, 2021 to February 28, 2022, Petitioner received \$[REDACTED] in ongoing and supplemental FAP benefits for a household of three (Exhibit A, p. 15).
5. On August 3, 2023, MDHHS sent Petitioner a Notice of Overissuance indicating that he was overissued FAP benefits in the amount of \$[REDACTED] during the period of December 1, 2021 to February 28, 2022 (alleged OI period) due to an agency error (Exhibit A, p. 8).
6. On July 14, 2023, Petitioner requested a hearing to dispute the assessment and calculation of the FAP OI (Exhibit A, pp. 4-6).

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 process his reported change in household income. 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 705 (October 2018), 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. *Id.*, 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.

Here, MDHHS testified that Petitioner was overissued FAP benefits due to an agency error. MDHHS acknowledged that Petitioner properly reported his income from Employer; however, MDHHS failed to process the change. Petitioner testified that he started working at Employer and reported the employment to MDHHS in a timely manner. Petitioner further expressed his position that he should not be penalized for the OI because it was an agency error, and he did not do anything wrong. Based on the evidence presented, it is undisputed that Petitioner properly reported his income. However, MDHHS is required by federal law and state policy to pursue OIs caused by agency error, providing that the OI exceeds \$250.00. 7 CFR 273.18(a)(2); BAM 705, p. 6.

To demonstrate that it properly calculated the OI amount, MDHHS presented evidence that Petitioner received \$[REDACTED] in ongoing and supplemental FAP benefits for a household of three during the alleged OI period (Exhibit A, p. 15). 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; updated December 2020). The State of Michigan issued EA from April 2020 to February 2023. ESA Memo 2023-10 (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.

Additionally, MDHHS introduced employment records from Employer (Exhibit A, pp. 31-35), and FAP OI Budgets, which recalculated Petitioner's FAP benefit rate after adding in the employment income (Exhibit A, pp. 17-22). The employment records show that Petitioner received his first biweekly check from Employer on October 27, 2021 in the amount of \$[REDACTED] (Exhibit A, p. 35). Petitioner continued receiving consistent biweekly pay from Employer during the alleged OI period (Exhibit A, p. 35). MDHHS began the alleged OI period in December 2021 (Exhibit A, p. 17). To calculate Petitioner's earned income, it multiplied \$[REDACTED] by 2.15 to equal \$[REDACTED] (Exhibit A, p. 17). Policy provides that MDHHS must calculate a standard, monthly amount of income for clients who receive pay more than one time per month. BEM 505 (October 2022), p. 1. For income received biweekly, MDHHS multiplies the amount by 2.15. *Id.*, p. 8. However, that is the policy for prospecting current and future months, not for calculating OIs. If the improper budgeting of income caused an OI, MDHHS must use the actual income for the past OI month for that income source. BAM 705, p. 8. For FAP, income is not converted from a wage match for any type of OI. *Id.*

The record shows that MDHHS converted Petitioner's earned income into a standard, monthly amount instead of using the actual income received, as required by policy. MDHHS should have budgeted \$[REDACTED] for Petitioner's income for each month during the alleged OI period, which represents the actual gross income that Petitioner received (Exhibit A, p. 35). Due to this error in the OI budgets, MDHHS has not shown that it

properly determined that Petitioner was ineligible for any benefits during the alleged OI period. Given the policy regarding EA, if Petitioner's household was eligible for any benefits during this timeframe, it would have been eligible for the maximum amount for the household size.

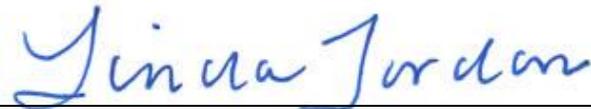
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that MDHHS did not act in accordance with Department policy when it determined that Petitioner received an OI of FAP benefits in the amount of \$ [REDACTED] due to an agency error.

DECISION AND ORDER

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

MDHHS 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:

Delete the OI in the amount of \$2,259.00 in its entirety and cease any recoupment or collection procedures.



Linda Jordan
Administrative Law Judge

LJ/tm

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
Heather Dennis
Jackson County DHHS
301 E. Louis Glick Hwy.
Jackson, MI 49201
**MDHHS-Jackson-
Hearings@michigan.gov**

Interested Parties

M. Holden
D. Sweeney
BSC4

DHHS Department Rep.
Overpayment Establishment Section
(OES)
235 S Grand Ave Ste 811
Lansing, MI 48909
**MDHHS-RECOUPMENT-
HEARINGS@Michigan.gov**

Via-First Class Mail :

Petitioner
Alex Brown
839 Springcrest Blvd
Jackson, MI 49203