



GRETCHEN WHITMER
GOVERNOR

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

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

Date Mailed: September 20, 2023

MOAHR Docket No.: 23-004790

Agency No.: [REDACTED]

Petitioner: [REDACTED]

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 September 11, 2023 via teleconference. Petitioner appeared and represented herself. Julie Luczak, 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 \$ [REDACTED] 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 November 14, 2020, MDHHS sent Petitioner a Notice of Case Action indicating that her FAP benefit rate had decreased to \$ [REDACTED] per month for a household of three (Exhibit A, p. 45).
3. On November 28, 2020, Petitioner submitted a Change Report indicating that she married [REDACTED] (Spouse), and that Spouse joined her household (Exhibit A, pp. 29-32).

4. On January 22, 2021, MDHHS sent Petitioner a Notice of Case Action, indicating that her FAP case would close, effective March 1, 2021, for failure to return verification of employment for Spouse (Exhibit A, pp. 50-51).
5. On July 14, 2023, MDHHS sent Petitioner a Notice of Overissuance stating that Petitioner received an OI of FAP benefits in the amount of \$[REDACTED] from January 1, 2021 to February 28, 2021 (alleged OI period) due to an agency error (Exhibit A, p. 8).
6. On August 8, 2023, Petitioner submitted a hearing request to dispute MDHHS' determination regarding the alleged FAP OI (Exhibit A, pp. 5-6).

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 act on her reported change in group composition in a timely manner. Petitioner properly reported her marriage to Spouse, and that Spouse joined her household. MDHHS failed to add Spouse to the FAP group and did not include his income in the FAP budget calculation, leading to an OI in FAP benefits. Petitioner disputed MDHHS' determination regarding the FAP 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 720, p. 8; BAM 715 (October 2017), 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.

Here, MDHHS acknowledged that it did not properly process Petitioner's reported change in group composition. It did not add Spouse to the FAP group and did not

include his income in the FAP budget calculation. MDHHS presented evidence that Spouse received earned income from the [REDACTED] (Employer) in the first quarter of 2021, in the amount of \$ [REDACTED] (Exhibit A, p. 25). Although Spouse was living with Petitioner during this time, this income was not considered in the FAP budget calculation. At the hearing, Petitioner testified that she did not recall receiving FAP benefits during this time but did not present sufficient evidence to show that she was not the actual recipient or that she was the victim of fraud. Petitioner did not dispute that Spouse was part of her household and did not dispute his earnings.

MDHHS also introduced FAP OI Budgets for the alleged OI period, which recalculated Petitioner's FAP benefit rate after adding in the earned income from Employer (Exhibit A, pp. 18-21). To calculate a client's FAP benefit rate, MDHHS must consider all countable earned and unearned income. BEM 500 (July 2020), pp. 1-5. Earned income refers to income received from another person or organization for duties that were performed for remuneration or profit. BEM 500, p. 4. Wages from employment include salaries, tips, commission, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. BEM 501 (January 2021), pp. 6-7.

MDHHS calculated that Petitioner received a FAP OI during the alleged OI period in the amount of \$ [REDACTED]. 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). Wrongfully-issued EA are recoupable by MDHHS if the FAP household is not eligible for any FAP benefits during the month at issue. From January 1, 2021 to September 30, 2021, FAP recipients became eligible for a 15% benefit increase in addition to their monthly allotment and the EA, pursuant to the 2021 Consolidated Appropriations Act, P.L. 116-260 (Appropriations Act), and extended by the American Rescue Plan, P.L. 117-2. Under Section 702(b)(4) of the Appropriations Act, the 15% benefit increase is not subject to recoupment. When requesting recoupment of FAP benefits from January 1, 2021 to September 30, 2021, MDHHS is required to explain how it calculated the OI amount, less the 15% benefit increase.¹

In January 2021 and February 2021, Petitioner received three FAP payments, including her ongoing FAP benefit amount of \$ [REDACTED], the EA \$ [REDACTED] and the 15% benefit increase of \$ [REDACTED] (Exhibit A, p. 15). MDHHS presented evidence to show that Petitioner's household was not eligible for any FAP benefits during the alleged OI period due to excess income. MDHHS requested to recoup the ongoing FAP benefit rate and the EA for those months and did not request to recoup the 15% benefit increase. The sum of the ongoing FAP benefit rate of \$ [REDACTED] and the EA of \$ [REDACTED] for January 2021

¹ See United States Department of Agriculture, *Supplemental Nutrition Assistance Program (SNAP), Consolidated Appropriations Act, 2021 – Questions and Answers* (February 19, 2021), available at <<https://www.fns.usda.gov/snap/provisions-consolidated-appropriations-act-2021>> (accessed September 20, 2023).

and February 2021 equals \$[REDACTED]. Therefore, MDHHS properly determined that Petitioner received a FAP OI in the amount of \$[REDACTED] and demonstrated that it excluded the 15% benefit increase pursuant to COVID-19 policy.

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 based on agency error.

DECISION AND ORDER

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



LJ/tm

Linda Jordan
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 :

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