



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
SUZANNE SONNEBORN  
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA  
ACTING DIRECTOR

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: September 26, 2023  
MOAHR Docket No.: 23-005192  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **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 via telephone conference line on September 21, 2023. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Julie Luczak, overpayment analyst.

### **ISSUES**

The issue is whether MDHHS established against Petitioner a recipient claim for Food Assistance Program (FAP) benefits allegedly over-issued 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. Beginning April 2020, Petitioner received Federal Pandemic Unemployment Compensation (PUC) benefits.
2. From June through August 2020, Petitioner received at least \$ [REDACTED] in gross PUC benefits.
3. From June through September 2020, Petitioner received \$2,036 in recoupable FAP benefits based on \$ [REDACTED] employment income and a benefit group of three persons.
4. In September 2020, Petitioner received \$2,172 in PEC benefits.

5. On December 11, 2020, Petitioner's case was referred to the recoupment unit.
6. On August 4, 2023, MDHHS calculated that Petitioner received an OI of \$2,036 in FAP benefits from June through September 2020 due to MDHHS's failure to budget UCB.
7. On August 4, 2023, MDHHS sent Petitioner a Notice of Overissuance stating that Petitioner received \$2,036 in over-issued FAP benefits from June through September 2020 due to agency error.
8. On August 21, 2023, Petitioner requested a hearing to dispute the alleged OI.

### **CONCLUSIONS OF LAW**

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 (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute MDHHS's attempt to establish a recipient claim for allegedly over-issued FAP benefits. Exhibit A, pp. 3-6. A Notice of Overissuance dated August 4, 2023, stated that Petitioner received \$2,036 in over-issued FAP benefits from June through September 2020 due to agency-error. Exhibit A, pp. 8-13.

An OI is the benefits issued to a client group in excess of what it was eligible to receive. BAM 700 (October 2018) pp. 1-2. When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the OI. *Id.* Recoupment is an MDHHS action to identify and recover a benefit OI. *Id.* A claim is the resulting debt created from an OI of benefits. *Id.*

Federal regulations refer to OIs of FAP benefits as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a). Recipient claim amounts not caused by trafficking are calculated by determining the correct amount of benefits for each month there was an OI and subtracting the correct issuance from the actual issuance.<sup>1</sup> 7 CFR 273.18(c)(1).

The types of recipient claims are those caused by agency error, unintentional client error, and IPV. 7 CFR 273.18(b). MDHHS may pursue FAP-related agency errors when they exceed \$250. BAM 705 (October 2018), p. 1. Thus, MDHHS may establish a claim against Petitioner if the established OI exceeds \$250.

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<sup>1</sup> Additionally, MDHHS is to subtract any benefits that were expunged (i.e., unused benefits which eventually expire from non-use). There was no evidence that any of the benefits issued to Petitioner were expunged.

Petitioners requesting hearings disputing OIs caused by agency error typically contend that they should not be required to repay an OI caused by MDHHS's error. Such an argument is based in equity; in other words, it is unjust to have a client repay benefits over-issued only because of MDHHS's error. Federal regulations and MDHHS policy each authorize recoupment of FAP benefits even when caused by MDHHS's error. Thus, MDHHS is not barred from establishing a claim against Petitioner simply because it caused the OI.

For agency errors, the OI period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the recoupment specialist, whichever period is later. *Id.*, p. 5. In the present case, MDHHS seeks a claim for an OI period beginning June 2020. Petitioner's case was referred to the recoupment unit on December 11, 2020. Exhibit A, p. 67. Going back 12 months from the referral date allows MDHHS to pursue a claim for agency error from before June 2020.

MDHHS contended that an OI was caused by its failure to timely budget PUC for Petitioner. MDHHS exchanges data with the Michigan Unemployment Insurance Agency (MUIA). BAM 800 (January 2018) p. 3. Case actions resulting from changes reported via tape match (BENDEX, SDX, IRS, enumeration, etc.) must be completed within 45 days of receiving the information.<sup>2</sup> BAM 220 (April 2020) p. 7.

Petitioner began receiving PUC on April 11, 2020. Exhibit A, p. 38. For FAP benefits, the \$600 PUC benefits are countable. Economic Stability Administration Memo 2020-24 dated April 17, 2020. Documentation obtained from MUIA listed the following gross monthly income to Petitioner: \$3,248 in April 2020, \$3,848 in May 2020, \$3,848 in June 2020, \$3,848 in July 2020, \$4,820 in August 2020, and \$2,172 in September 2020. Exhibit A, pp. 35-39. MDHHS should have processed the addition of PUC within 45 days of April 11, 2020. Instead, MDHHS delayed processing the change until after September 2020.

A claim based on untimely budgeted income requires that unbudgeted income caused an OI. MDHHS presented FAP-OI budgets from June through September 2020 demonstrating how an OI was calculated. Exhibit A, pp. 18-26. Actual FAP issuances totaling \$2,036 were taken from documentation of Respondent's FAP issuance history. Exhibit A, pp. 14-17. Presumably, correct FAP benefits were calculated from the same group size, income, and expenses from original budgets other than including Respondent's gross UCB.<sup>3</sup> No errors to the budgets were alleged. For each month, Petitioner's income exceeded either gross or net income limits which resulted in corrected issuances of \$0. Using the procedures set forth in BEM 556 for calculating FAP eligibility, an OI of \$2,036 was calculated.

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<sup>2</sup> Federal regulations require change reporters to report income within 10 days after the income begins. 7 CFR 273.12(a)(2). MDHHS indicated that Petitioner was a change reporter and obligated to report PUA within 10 days. However, because the OI was framed as a client error, Petitioner's alleged failure to report is not relevant.

<sup>3</sup> Factoring gross income is compliant with unearned income policy (see BEM 503).

Petitioner testified she has worked hard to support her family and that having to repay benefits over-issued because of MDHHS's fault would be a hardship. Petitioner also testified that she received excessive FAP benefits. Petitioner's testimony was wholly sincere and understandable, but it is not relevant to whether the claim should be established.<sup>4</sup>

The evidence established that Petitioner received an OI of \$2,036 in FAP benefits from June through September 2020 due to agency-error. Thus, MDHHS established a recipient claim of \$2,036 against Petitioner for agency error.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a claim of \$2,036 for FAP benefits over-issued to Petitioner from June through September 2020 due to agency error. The MDHHS action to establish against Petitioner a recipient claim is **AFFIRMED**.

CG/nr

  
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**Christian Gardocki**  
Administrative Law Judge

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<sup>4</sup> MDHHS allows for claims to be reduced or eliminated if it is determined that a household's economic circumstances are such that the overissuance cannot be paid within three years. BAM 725 (January 2021) p. 15. Such requests 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. *Id.*

**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**  
Kelly Sutherland  
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Hearings@michigan.gov**

**Interested Parties**  
Livingston County DHHS  
MDHHS Recoupment  
N. Stebbins  
MOAHR

**DHHS Department Rep.**  
Overpayment Establishment Section  
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