



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  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: March 14, 2024  
MOAHR Docket No.: 24-000031  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner**

### **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 by telephone on March 4, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Alison Peck, Overpayment Establishment Analyst.

### **ISSUE**

Did Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits due to agency error that the Department is entitled to recoup?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all times relevant to this case, Petitioner was an ongoing recipient of FAP benefits for a group of six (6). (Exhibit A, pp. 169 – 188).
2. Petitioner's group included herself, her son [REDACTED] (MT), her daughter [REDACTED] (JS), her daughter [REDACTED] (TB), and two grandchildren (MW and DS). (Exhibit A, pp. 169, 171 – 172, 178, 185 – 186).
3. On September 1, 2017, the Department sent Petitioner a Semi-Annual Contact Report, which Petitioner completed and returned to the Department on September 27, 2017. The Semi-Annual Contact Report advised Petitioner that the Department was budgeting [REDACTED] in monthly gross earned income. Petitioner

confirmed there were no changes to the group members, that her rent payment had changed, and that there were no changes in the group's earnings. (Exhibit A, pp. 169 – 170).

4. On September 16, 2017, the Department issued a Notice of Case Action (NOCA) to Petitioner, approving her for \$410 in monthly FAP benefits for a certified group of six (6) for the period of November 1, 2017 to April 30, 2018. The NOCA included information and instructions regarding Petitioner's responsibilities regarding changes in income. (Exhibit A, pp. 171 – 176).
5. On March 5, 2018, the Department sent Petitioner a redetermination application, which Petitioner completed and returned to the Department on March 22, 2018. Petitioner confirmed that there were no changes to the group members, no one planned to file a federal income tax return for the following year, and that no one had income; however, the form reflected employment for JS, and child support for SB which would end May 2017. (Exhibit A, pp. 177 – 184).
6. On April 30, 2018, the Department issued a NOCA to Petitioner, approving her for \$913 in monthly FAP benefits for a certified group of six (6) for the period of May 1, 2028 to April 30, 2019. The NOCA included information and instructions regarding Petitioner's responsibilities regarding changes in income. (Exhibit A, pp. 185 – 189).
7. Between February 1, 2018 and January 31, 2019, the alleged OI period, Petitioner received a total of \$9,124 in ongoing and supplemental FAP benefits. (Exhibit A, p. 21).
8. On December 20, 2018, the Department made an OI referral based on a Wage Match report for MT for the period of "October 1, 2017 to present". (Exhibit A, p. 197).
9. On or about December 20, 2023, the Department investigated and reviewed Petitioner's FAP group's earnings during the period of February 1, 2018 to January 31, 2019 and determined that there were earnings by Petitioner, MT, JS, and TB that had not been budgeted. The Department recalculated the FAP benefit amount Petitioner should have received for each month in the period when this unbudgeted income was taken into consideration and determined that Petitioner should not have received any FAP during this period based on the earnings of the FAP group members. (Exhibit A, pp. 20, 22 – 47).
10. On December 20, 2023, the Department sent a Notice of Overissuance to Petitioner indicating Petitioner was overissued FAP benefits during the period of February 1, 2018 and January 31, 2019 in the amount of \$9,142. (Exhibit A, pp. 14 – 19).
11. On January 8, 2024, Petitioner submitted a request for hearing to the Department disputing the Department's FAP OI determination. (Exhibit A, pp. 8 – 11).

## **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 requested a hearing in this matter to dispute the finding by the Department that Petitioner was overissued FAP benefits for the period of February 1, 2018 through January 31, 2019 in the amount of \$9,124 (Exhibit A, pp. 14 – 19). Petitioner's request for hearing states two reasons for her request: a) Petitioner turned in all paperwork that was asked of her and b) any error is that of the Department's and she does not have the ability to pay the OI amount. (Exhibit A, p. 11).

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (October 2018), p. 1; 7 CFR 273.18(a)(2). The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 705 (October 2018), p. 6; 7 CFR 273.18(c)(1). An OI can be caused by client error, agency error, or an intentional program violation (IPV). BAM 700, pp. 5 – 9. An agency error is caused by incorrect actions by the Department, including not using available information. BAM 700, pp. 5 – 6; BAM 705, p. 1; 7 CFR 273.18(b)(3).

When an OI due to agency error, in excess of \$250.00, is discovered, the Department is required to establish a claim for repayment for the OI. BAM 700, p. 5; BAM 705, p. 7; 7 CFR 273.18(d)(3). Additionally, each adult member of a household is responsible for payment of claims. 7 CFR 273.18(a)(4). Federal regulations do not allow the Department latitude to exercise discretion in establishing and pursuing a claim for OI. 7 CFR 273.18(a)(2). The Department must go back to at least twelve months before it became aware of the overpayment; however, it cannot include amounts that occurred more than six years before it became aware of the overpayment. 7 CFR 273.18(c)(i); BAM 705, pp. 5 – 6. Because the referral to the recoupment specialist was made in the case on December 20, 2018 (Exhibit A, p. 197), the Department may properly pursue an OI against Petitioner for the period February 1, 2018 through January 31, 2019, which is a period that starts within twelve months prior to the referral date and within six years of when it became aware of the overpayment.

In this case, while the Petitioner failed to report the income or changes in income to the Department as required, the Department acknowledged that it erred in failing to review all available resources as required by policy (BEM 500 (July 2017), p. 1; BEM 501 (October 2018), pp. 6 – 7) when it failed to complete new hire, wage match, and consolidated inquiry reports at the time of the September 2017 Semi-Annual Contact Report and April 2018 Redetermination. (Exhibit A, p. 3). Therefore, the Department determined Petitioner's FAP group eligibility, and issued benefits, without consideration of Petitioner's FAP group's actual, income as required by policy and, as a result, Petitioner was overissued \$9,124 in FAP benefits from February 1, 2018 through January 31, 2019 due to agency error. BEM 505 (October 2017), pp. 1, 6 – 10.

In support of its calculations of an OI, the Department presented OI budgets for each month of the OI period. The Department testified that it calculated the OI total for these periods by calculating what Petitioner's FAP budget would have been for each month during the OI period had the group's earned income been included in the household budget. (BEM 505 (October 2023), pp. 13 – 14; Exhibit A, pp. 22 – 47). To calculate Petitioner's group's income for purposes of determining the OI, the Department utilized employment and unearned income information for Petitioner, MT, JS, and TB from the Work Number database<sup>1</sup>, Wage Match<sup>2</sup>, Consolidated Inquiry returns<sup>3</sup>, and the Social Security Administration District Office. (Exhibit A, pp. 49 – 93, 97 – 98, 110 – 162, 167, 192 – 196). The Department testified that the only changes in Petitioner's FAP budgets when calculating the OI budget versus the original budget were including the income information from all available sources and the corresponding adjustment to the excess shelter deduction calculation. While Petitioner testified that her rent expense increased to \$920 per month at some point relevant to the period at issue, she was not able to offer evidence in support of her testimony that she had reported that change to the Department.

A review of the OI budgets shows that the Department correctly calculated Petitioner's group's earned monthly income for Petitioner, MB, TB, and JB based on either actual pay for each month at issue or the averaged monthly pay based on quarterly earnings. (Exhibit A, pp. 22 - 47). Based on the group's earned income during the OI period, Petitioner's FAP group was not eligible for any FAP benefits from February 1, 2018 through January 31, 2019. During this period, Petitioner was issued \$9,124 in FAP. Therefore, Petitioner received an OI of FAP benefits totaling \$9,124. (Exhibit A, p. 15). The Department's FAP OI budgets correctly reflect that Petitioner should not have received any FAP benefits for that period. (Exhibit A, p. 15; see also RFT 250 (October 2017 and October 2018) and RFT 260 (October 2017 and October 2018)). Therefore, the OI of FAP benefits is \$9,124.

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<sup>1</sup> The Work Number is a tool provided by Equifax Verification Services that the Department uses to verify clients' employment information through wage matches.

<sup>2</sup> Wage Match references the matching of recipient employment data with the Talent Investment Agency (TIA) and Unemployment Insurance Agency (UIA) through computer data exchanges.

<sup>3</sup> Consolidated Inquiry returns report income information available through electronic databases maintained by state and federal agencies and may include employment, child support, and other income information.

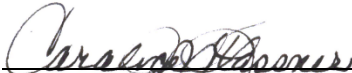
At the hearing, Petitioner expressed concerns that she is unable to repay the FAP OI given her limited income. While collectability of OI is not within the purview of the undersigned, it is noted that all adult members of a FAP group that received an OI of FAP benefits are responsible for the FAP OI. 7 CFR 273.18(a)(4). Petitioner is further advised that the Department can compromise (reduce or eliminate) an overissuance if it is determined that a household's **economic** circumstances are such that the overissuance cannot be paid within three years, but such a request for a policy exception may be made only by the recoupment specialist to the Overpayment, Research and Verification Section office outlining the facts of the situation and the client's **financial** hardship; the manager of the MDHHS Overpayment, Research and Verification Section has final authorization on the determination for all compromised claims. BAM 725 (January 2021), p. 16.

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 the Department acted in accordance with Department policy when it determined an OI of FAP benefits to Petitioner's FAP group exists, due to agency error, and the Department is entitled to recoup.

**DECISION AND ORDER**

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

CML/pt

  
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**Caralyce M. Lassner**  
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:**

**DHHS**

Jeanenne Broadnax  
Wayne-Taylor-DHHS  
25637 Ecorse Rd.  
Taylor, MI 48180

**MDHHS-Wayne-18-Hearings@michigan.gov**

**DHHS Department Rep.**

Overpayment Establishment Section (OES)  
235 S Grand Ave, Ste 811  
Lansing, MI 48909

**MDHHS-RECOUPMENT-HEARINGS@Michigan.gov**

**Interested Parties**

BSC4  
M Holden  
B Cabanaw  
N Denson-Sogbaka

**Via First Class Mail:**

**Petitioner**

[REDACTED]  
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