



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: February 23, 2024
MOAHR Docket No.: 24-000272
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 February 14, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Alison Peck, Overpayment Establishment Analyst.

ISSUE

Did the Department properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits in the amount of \$3,902, for the period of May 1, 2019 through November 30, 2019, 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. At all times relevant to this case, Petitioner was an ongoing recipient of FAP benefits. (Exhibit A, pp. 71 – 79).
2. On [REDACTED] 2018, Petitioner applied for FAP benefits. (Exhibit A, pp. 55 – 63). The application includes a list of applicant responsibilities, set forth above the Petitioner's signature, including that a FAP recipient will have to repay any benefits received in error and will have to report any changes to the information contained in the application. (Exhibit A, p. 62).

3. On November 5, 2018, the Department issued a Notice of Case Action (NOCA) indicating that Petitioner was approved for FAP benefits for a group of six (6) in the amount of \$756 per month for the period of November 2, 2018 through November 30, 2018. (Exhibit A, pp. 64 – 68). The NOCA also included a budget summary reflecting that the benefits were approved based on total earned income of [REDACTED] and total unearned income of [REDACTED] per month. (Exhibit A, p. 65). The NOCA also advised Petitioner of her responsibility to notify the Department within 10 days of any changes in circumstances including employment or income. (Exhibit A, p. 68). Lastly, a Change Report form was included with the NOCA for Petitioner to use to report any changes in household members, income, and any other changes. (Exhibit A, pp. 69 – 70).
4. On November 20, 2018, the Department issued a NOCA indicating that Petitioner was approved for FAP benefits for a group of six (6) in the amount of \$632 per month for the period of December 1, 2018 through November 30, 2019. (Exhibit A, p. 71). The NOCA also included a budget summary reflecting that the benefits were approved based on total earned income of [REDACTED] and total unearned income of [REDACTED] per month. (Exhibit A, p. 72). Finally, the NOCA also advised Petitioner of her responsibility to notify the Department within 10 days of any changes in circumstances including employment or income. (Exhibit A, p. 74).
5. On or about March 29, 2019, Petitioner received her first paycheck following her return to work at [REDACTED] (Employer) after maternity leave. She continued to work for Employer at all times relevant to the issue in this case. (Exhibit A, pp. 41 - 48).
6. On July 20, 2019, the Department issued a NOCA indicating that Petitioner was approved for an increase in FAP benefits for a group of six (6) in the amount of \$783 per month for the period of July 1, 2019 through November 30, 2019. (Exhibit A, p. 75). The NOCA also included a budget summary reflecting that the benefits were approved based on total earned income of [REDACTED] and total unearned income of [REDACTED] per month. (Exhibit A, p. 76). Finally, the NOCA also advised Petitioner of her responsibility to notify the Department within 10 days of any changes in circumstances including employment or income. (Exhibit A, p. 79).
7. On October 4, 2019, the Department sent Petitioner a redetermination application. (Exhibit A, p. 80).
8. On or about November 1, 2019, Petitioner returned the completed application to the Department and reported her employment with Employer on the application. (Exhibit A, pp. 80 – 87).
9. On December 4, 2019, the Department issued a NOCA indicating that Petitioner was approved for FAP benefits for a group of six (6) in the amount of \$158 per month for the period of December 1, 2019 through November 30, 2020. (Exhibit A, p. 88). The NOCA also included a budget summary reflecting that the benefits

were approved based on total earned income of [REDACTED] and total unearned income of [REDACTED] per month. (Exhibit A, p. 89).

10. On December 4, 2019, the Department made an OI referral based on unreported earnings of Petitioner for the period of March 2019 through October 2019. (Exhibit A, p. 108).
11. In May 2019 and from July 1, 2019 through November 30, 2019, the alleged OI period, Petitioner received a total of \$4,575 in ongoing and supplemental FAP benefits. (Exhibit A, pp. 15 – 16).
12. On January 11, 2024, the Department reviewed Petitioner's earnings during the period of May 1, 2019 and November 30, 2019 and recalculated the FAP benefit amount Petitioner should have received for each month in the period. The Department determined that Petitioner received \$3,902 in ongoing and supplemental FAP benefits that Petitioner should not have received based on her earnings. (Exhibit A, pp. 17 – 31).
13. On January 11, 2024, the Department sent a Notice of Overissuance to Petitioner indicating Petitioner was overissued FAP benefits during the period of May 1, 2019 through November 30, 2019 in the amount of \$3,902 because Petitioner returned to work and resumed receiving earnings on March 29, 2019 and failed to report that change to the Department until November 1, 2019. (Exhibit A, pp. 8 – 12).
14. On January 17, 2024, Petitioner submitted a request for hearing to the Department disputing the Department's FAP OI determination. (Exhibit A, p. 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. 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 a finding by the Department that Petitioner was overissued FAP benefits in the amount of \$3,902 between May 1, 2019 and November 30, 2019 based on Petitioner's failure to report earnings to the Department in a timely manner. (Exhibit A, pp. 6, 8 – 10).

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 715 (October 2017), 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. A client error occurs when the OI was due to the client giving incorrect or incomplete information to Department. BAM 700, p. 7. When an OI in excess of \$250.00 is discovered, the Department is required to establish a claim for repayment for the OI. BAM 715, p. 7; 7 CFR 273.18(d)(3).

Here, Petitioner applied for and was approved for FAP benefits starting November 2, 2018 when the Department issued a NOCA to Petitioner. Starting with the application itself, Petitioner was notified and reminded multiple times of her duty to report a change in her work status and/or income to the Department within ten (10) days. (Exhibit A, p. 62).

The Department then issued a NOCA to Petitioner on November 5, 2018, advising her she was approved for FAP benefits for a group of six (6) in the amount of \$756 per month for the period of November 2, 2018 through November 30, 2018. (Exhibit A, pp. 64 – 68). The NOCA also included a budget summary reflecting that the benefits were approved based on total earned income of [REDACTED] and total unearned income of [REDACTED] per month. (Exhibit A, p. 65). The NOCA also advised Petitioner of her responsibility to notify the Department within 10 days of any changes in circumstances including employment or income. (Exhibit A, p. 68). Lastly, a Change Report form was included with the NOCA for Petitioner to use to report any changes in household members, income, and any other changes. (Exhibit A, pp. 69 – 70).

Petitioner was again reminded of her responsibilities on November 20, 2018 when the Department issued another NOCA. (Exhibit A, p. 74). This NOCA advised Petitioner she was approved for FAP benefits for a group of six (6) in the amount of \$632 per month for the period of December 1, 2018 through November 30, 2019 and included a budget summary reflecting that the benefits were approved based on total earned income of [REDACTED] and total unearned income of [REDACTED] per month. (Exhibit A, pp. 71 – 72).

Petitioner was reminded of her responsibilities again on July 20, 2019 when the Department issued another NOCA increasing her FAP benefits to \$783 per month for the period of July 1, 2019 through November 30, 2019. (Exhibit A, p. 75). This NOCA also advised Petitioner of her responsibility to notify the Department within 10 days of any changes in circumstances including employment or income and included a budget summary reflecting that the benefits were approved based on total earned income of [REDACTED] and total unearned income of [REDACTED] per month. (Exhibit A, p. 76 – 79).

The Department testified that Petitioner did not report that she had returned to work in March 2019 until she completed and returned her redetermination application to the Department on November 1, 2019. (Exhibit A, pp. 80 – 87). While Petitioner testified that she reported her return to work to the Department prior to November 1, 2019, she

did not offer any documentation to that effect and did not provide any clear testimony on when exactly she had done so. Because Petitioner did not timely report her return to employment, the FAP OI in this case was due to client error.

The record shows that after returning to work, Petitioner was first paid on March 29, 2019. (Exhibit A, p. 45). Petitioner had ten (10) days after receiving her first paycheck after returning to work to report the change to the Department. BAM 105 (January 2019), p. 12. After a change is reported, the Department has ten (10) days to act on the change and take action. BAM 220 (April 2019), p. 7. Income increases that result in a benefit decrease are considered negative actions. While notice, and the effective date, of the negative action is required to be issued within the ten (10) days pursuant to BAM 220, the decrease itself becomes effective on the first day of the month following the negative action. BEM 505 (October 2017), p. 12. See also BAM 715, p 5.

Petitioner's increase in earned income would have resulted in a negative action. Had Petitioner reported her change in income timely, Petitioner would have had to report the change to the Department by April 8, 2019. The ten (10) day period for Petitioner's change to be processed expired on April 18, 2019, and therefore the effective month of the decrease was May 1, 2019. Therefore, the Department properly determined May 1, 2019 as the beginning of the OI period.

The Department testified that an OI in the amount of \$3,902 is owed by Petitioner. (Exhibit A, pp. 8 – 12). The Department testified, and presented evidence in support, that it determined the amount of the OI by completing revised budgets for each of the months at issue in Petitioner's case; specifically May, July, August, September, October, and November 2019. (Exhibit A, pp. 18 – 31).

The Department testified that it relied on the actual wages earned, as reported by Work Number, to determine the earnings for each of the foregoing months. (Exhibit A, pp. 41 – 48). The Department also testified that it relied on Petitioner's housing and utility expenses to calculate Petitioner's total shelter expense. The Department further testified that it determined that no OI existed for June and that, because Petitioner reported her earnings on November 1, 2019, it treated the November earnings as reported earnings despite not being reported to the Department in a timely manner.

A review of the OI budgets for the months of May, July, August, September, and October 2019 shows that the Department calculated the household's gross income and net income properly and in accordance with policy. Because Petitioner failed to timely report earned income until November 2019, the household was not eligible for the earned income deduction for these months. BAM 715, p. 8; see also BAM 720 (October 2017), p. 10. These budgets establish that Petitioner was overissued \$3,124 for the months of May 2019 and July 2019 through October 2019.

In the November 2019 OI budget, the Department converted Petitioner's actual November earnings into a standard monthly amount multiplying the average of the two biweekly checks Petitioner received that month by 2.15. In doing so, the Department

failed to act in accordance with policy when processing a budget for a past month for OI purposes. The policy requires the Department to utilize actual earnings for past months in the OI period. BEM 505, pp. 8, 13. Instead of determining Petitioner's earned income for November 2019 based on the total [REDACTED] (from Petitioner's two paychecks in the amount of [REDACTED] and [REDACTED] the Department used a higher figure resulting from its erroneous conversion of this income to a standard monthly amount.

Therefore, 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 Petitioner was overissued FAP benefits for:

- May 2019 in the amount of \$107.00,
- July 2019 in the amount of \$677.00,
- August 2019 in the amount of \$783.00,
- September 2019 in the amount of \$783.00, and
- October 2019 in the amount of \$774.00.

However, the Administrative Law Judge further finds that while Petitioner may have been overissued FAP benefits for November 2019, the OI was erroneously calculated, and therefore, the Department did not act in accordance with Department policy when it determined the OI of FAP benefits to Petitioner for November 2019 was \$778.00.

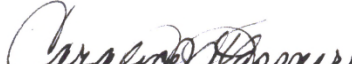
DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED with respect to the November 2019 OI**.

THE DEPARTMENT 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:

1. Redetermine the amount of Petitioner's earned income for November 2019;
2. Redetermine what amount, if any, Petitioner was overissued for FAP benefits for November 2019; and
3. Notify Petitioner of its decision in writing.

CML/ml



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

Tara Roland 82-17
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DHHS Department Rep.

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Interested Parties

BSC4
M Holden
B Cabanaw
N Denson-Sogbaka

Via First Class Mail:

Petitioner

[REDACTED]
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