



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: April 12, 2024
MOAHR Docket No.: 24-002266
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 April 4, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Eugene Brown, 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 \$4,596, for the period of August 1, 2022 through November 30, 2022, due to 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 June 1, 2022, the Department sent Petitioner a Notice of Case Action (NOCA), approving her for FAP benefits in the amount of \$992 per month for a certified group of five. (Exhibit A, pp. 70 – 71).
3. The NOCA informed Petitioner that she was a Simplified Reporter (SR) and was required to report if, at the end of the month, her household's gross earned or unearned income exceeds \$ [REDACTED]. The Department also provided Petitioner with a notice regarding a simplified six month review. (Exhibit A, pp. 71, 75, 76 – 77).

4. On June 24, 2022, the Department sent Petitioner a New Hire Client Notice and form, requesting information regarding new employment of Petitioner with [REDACTED] [REDACTED] [REDACTED] (Employer) by July 5, 2022. (Exhibit A, pp. 78 – 80).
5. On October 4 2022, the Department sent Petitioner a redetermination application, which Petitioner completed and returned to the Department on November 3, 2022. (Exhibit A, pp. 81 – 85).
6. On November 16, 2022, the Department interviewed Petitioner as part of the redetermination process. During the interview, the Department noted that Petitioner had been employed by Employer starting in May 2022, further noting that her last paycheck was dated October 6, 2022 and that Petitioner had not reported her income from that employment. (Exhibit A, pp. 86 – 93).
7. On November 16, 2022, the Department obtained an Equifax Work Number report¹, which reflected that Petitioner had been employed with Employer from May 12, 2022 through September 22, 2022. (Exhibit A, pp. 99 – 100).
8. On November 16, 2022, the Department submitted an OI referral to the Department’s recoupment specialists, indicating that the referral was made due to Petitioner’s “unreported earnings” from Employer and that an IPV or fraud were suspected. (Exhibit A, p. 101).
9. On February 16, 2024, the Department sent Petitioner a Notice of Overissuance, with an OI summary, notifying her that she was overissued \$\$4,596, for the period of August 1, 2022 through November 30, 2022, due to agency error. (Exhibit A, pp. 8 – 13).
10. On February 28, 2024, the Department received Petitioner’s request for hearing disputing the OI, and in which Petitioner stated that she returned the New Hire Client Notice even though her income was less than the SR limit. (Exhibit A, pp. 4 – 5).

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).

¹ Work Number is a report regarding an applicant/client’s employment and income history that the Department can access for use in evaluating public service eligibility.

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 to dispute the Department's Notice of Overissuance, dated February 16, 2024, which alleged Petitioner received \$4,596 in over-issued FAP benefits for the four-month period of August 1, 2022 through November 30, 2022, due to agency error.

An agency error OI is caused by incorrect actions by the Department, including delayed or inaction, which results in a client receiving more benefits than they were entitled to receive. BAM 700 (October 2018), p. 5; BAM 705 (October 2018), p. 1. Here, the Department testified that it failed to close Petitioner's FAP case when she failed to return a completed new hire client notice form by the Department's due date and that the Department's inaction caused the OI. Therefore, any resulting OI was caused by agency error.

When a FAP recipient group is alleged to have received more benefits than it was entitled to receive, the Department must attempt to recoup any OI of \$250 or more as a recipient claim. BAM 700, pp. 1 – 2, 5; 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. 7 CFR 273.18(c)(1); BAM 720 (October 2017), p. 8; BAM 715 (October 2017), p. 6. When the Department's inaction causes the OI error, the alleged OI period begins the first month when the benefit issuance exceeds the amount allowed by policy. BAM 705, p. 5.

In this case, the Department received information through the State New Hire database² that Petitioner was employed by Employer. Based on this information, the Department sent Petitioner a request for verification of her employment on June 24, 2022 in the form of a new hire client notice (Exhibit A, pp. 78 – 80), as required by policy. BAM 807 (April 2022), p. 1. The new hire client notice stated that it was due by July 5, 2022. (Exhibit A, p. 78). When the verification is returned, the Department is to make the appropriate changes in the client's case and then run an eligibility determination benefit calculation to reduce or close the benefits. BAM 807, p. 2. If the verification is not returned, the Department is to initiate case action to close the case. BAM 807, p. 2.

² The State New Hire database is established from W-4 tax records (or other new hire reporting formats) submitted by employers to the Michigan New Hire Operations Center. Michigan employers are required to report all new employees within 20 days of the date of hire. The State New Hires process matches the Social Security number (SSN) for all active recipients to the database. If a SSN match is found on Bridges and the State New Hires database, a State New Hires match is created if there is no earned income reflected in Bridges. The State New Hires Match is a daily data exchange of information collected by the Michigan New Hire Operations Center and obtained through the Office of Child Support. State New Hires information is used to determine current income sources for active Department clients. BAM 807 (April 2022), p. 1.

However, before the Department may take a negative action on a client's case, it must provide timely notice. BAM 220 (April 2022), p. 5. A decrease in program benefits, including case closure, is a negative action. BAM 220, p. 11. A timely notice must be in writing and sent at least 11 days before a negative action takes effect; this provides the client a chance to react to the proposed action or request a hearing. BAM 220, p. 5.

Before the Department can establish an OI due its failure to timely close Petitioner's FAP case, it has to show that Petitioner had timely notice of the negative action in writing, which includes an opportunity to request a hearing, before the negative action would take effect. BAM 220, p. 12. The opportunity to request a hearing includes a date which is the last date on which a client can request a hearing and have benefits continued or restored pending the hearing. This is called the timely hearing request date, and the timely hearing request date is **always** the day before the negative action is effective. BAM 220, p. 12 (emphasis added). The timely notice must also include a negative action effective date, which is the day after the timely hearing request date. BAM 220, p. 12.

In this case, the Department testified that Petitioner's case should have been closed once it determined that she failed to return the new hire client notice form. The Department averred that the alleged OI is therefore proper, as an agency error, because had the Department closed Petitioner's case as it should have, she would not have received any of the FAP benefits issued to her during between August 1, 2022 and November 30, 2022, and therefore, all the benefits Petitioner received during this time were an OI. However, if Petitioner did not return the new hire client notice, the Department was required to send Petitioner an NOCA with timely notice, including notice of her opportunity to request a hearing, before closing her FAP case, which it did not do. By failing to send a NOCA, the Department never established a negative action effective date to which to tie its alleged overissuance. See BAM 220, p. 12. Therefore, the Department did not act in accordance with Department policy when it determined Petitioner received an OI of FAP benefits in the amount of \$4,596, for the period of August 1, 2022 through November 30, 2022 due to agency error.

Because the Department cannot, in the absence of an NOCA, establish an OI due to agency error because it failed to timely close Petitioner's FAP case, the Department is limited to pursuing an OI based on client error. During the alleged OI period, Petitioner was a SR who was required to report only when her household's income exceeded \$3,363. BAM 700, p. 3; Exhibit A, p. 71. The only client error OI for FAP SR groups is if the group fails to report when income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. BAM 200. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. The Department did not present any evidence establishing a client error resulting in FAP OI.

Notwithstanding the foregoing, Petitioner testified that she did return the completed form to the Department at the end of June by U.S. mail and had a follow up telephone conference with her worker at that time as well. While the Department testified that it

did not have a record of either the completed form or Petitioner's telephone conference with her worker, Petitioner's testimony was credible.

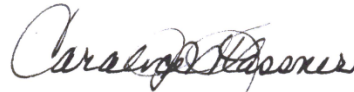
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy and did not establish that Petitioner received an OI of FAP benefits in the amount of \$4,596, for the period of August 1, 2022 through November 30, 2022.

DECISION AND ORDER

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

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:

Delete the FAP OI in the amount of \$4,596 in its entirety and cease any recoupment or collection procedures.



Caralyce M. Lassner
Administrative Law Judge

CML/nr

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

Yvonne Hill
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**MDHHS-Oakland-DistrictII-
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Interested Parties

Oakland 2 County DHHS
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MOAHR

DHHS Department Rep.

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Petitioner

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