



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 18, 2024  
MOAHR Docket No.: 24-002560  
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 11, 2024. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Ofonime Ekpo, Eligibility Specialist.

### **ISSUE**

Did the Department properly close Petitioner's FAP case, effective March 1, 2024?

Did the Department properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits in the amount of \$654, for the period of September 1, 2023 to February 29, 2024, 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. Petitioner was group of one, over age 60, and his sole source of income was Retirement, Survivors, and Disability Insurance (RSDI).
2. On January 30, 2024, the Department closed Petitioner's FAP case, effective March 1, 2024.

3. On February 23, 2024, the Department sent Petitioner a Notice of Overissuance (OI), seeking recoupment of \$654 in FAP benefits for the period of September 1, 2023 to February 29, 2024, due to agency error. (Exhibit A, pp. 8 – 13).
4. The agency's alleged error arose due to its failure to update Petitioner's income, as reported by Petitioner, or to obtain updated unearned income information through State Online Query (SOLQ) from the Social Security Administration (SSA), until November 1, 2023. The agency also identified an error in Petitioner's shelter expense. (Exhibit A, pp. 1, 14, 18, 22, 26).
5. On March 4, 2024, the Department received Petitioner's request for hearing. (Exhibit A, pp. 4 – 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 regarding closure of his FAP case and clarified at the hearing that he also disputed the Department's Notice of Overissuance, dated February 23, 2024, which alleged Petitioner received \$654 in over-issued FAP benefits for the period of September 1, 2023 through February 29, 2024, due to agency error.

#### **FAP Closure Effective March 2024**

The Department reviewed Petitioner's FAP case on January 30, 2024, at which time it corrected an error the Department made in budgeting Petitioner's mortgage payment. (Exhibit A, p. 1). The Department then closed Petitioner's FAP case, effective March 1, 2024. (Exhibit A, p. 1). While the Department did not provide a Notice of Case Action (NOCA) at the hearing, it did provide a net income budget for the benefit period beginning March 1, 2024 which reflected unearned income of \$2,882, a standard deduction, an excess shelter deduction of \$605, and net income of \$2,079. (Exhibit A, p. 24).

When the Department is aware of a change in a client's financial circumstances, the Department must evaluate the change and determine if the change will affect eligibility

or benefit level. BAM 220 (November 2023), p. 1. Allowable expenses are budgeted to determine net income for FAP eligibility and benefit levels. BEM 554 (January 2024), p. 1.

To determine whether the Department properly calculated Petitioner's FAP benefit amount, the Department starts with all countable earned and unearned income available to the Petitioner. BEM 500 (April 2022), pp. 1 – 5. Here, Petitioner testified that his sole source of income was RSDI in the amount of \$2,882, which is the amount reflected on the Department's budget. (Exhibit A, p. 24). For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2023), pp. 29, 35. The Department properly determined Petitioner's total income amount.

After countable income is calculated, the Department must determine which deductions are available to Petitioner. Specific and limited deductions are permitted, depending on the source of countable income and the group's composition. Because Petitioner is over age 60, he is considered a senior/disabled/veteran (SDV) household for purposes of FAP benefits. BEM 550 (April 2023), p. 1. Households with SDV members with unearned income may be eligible for the following deductions only:

- Standard deduction based on group size.
- Dependent care expense.
- Medical expense deduction for medical expenses of the SDV member in excess of \$35.
- Court ordered child support and arrearages paid to non-household members.
- Excess shelter deduction.

BEM 554 (January 2024) p. 1; BEM 556 (January 2023) pp. 3 – 6.

Petitioner confirmed that he has no dependent care expenses or court ordered child support expenses and no deduction for either of those expenses are reflected on the budget. (Exhibit A, pp. 24 – 25).

SDV groups who verify one-time or ongoing medical expenses in excess of \$35.00 for the SDV member will receive a standard medical deduction of \$165.00 unless the group has actual medical expenses in a higher amount and verify those actual expenses. BEM 554, p. 9. Neither the Department nor Petitioner offered testimony that Petitioner pays for Part B Medicare insurance premiums; further, Petitioner testified that while he has medical expenses in excess of \$35 per month, he did not provide any proof to the Department of those expenses. Based on the information available to it, the Department did not include a deduction for medical expenses on the budget. (Exhibit A, pp. 24 – 25).

All groups are entitled to a standard deduction in an amount determined by the group size. BEM 550, p. 1. Groups of 1 to 3 receive a standard deduction of \$198.00 RFT

255 (October 2023). The Department properly deducted \$198.00 from Petitioner's countable income, as shown on the budget. (Exhibit A, pp. 24 – 25).

Before determining the excess shelter deduction, the Department must first calculate an adjusted gross income (AGI) for Petitioner by subtracting available deductions from total countable income. The Department properly determined Petitioner's AGI to be \$2,684, based on \$2,882 in countable income, reduced by the \$198 standard deduction. (Exhibit A, p. 24).

Next, the Department determines any excess shelter expense deduction. BEM 554, p. 13. To calculate this amount, the Department reviews Petitioner's housing and utility expenses, if any. BEM 556, pp. 5 – 6. Petitioner provided a mortgage statement, with a due date of October 1, 2023, to the Department on September 28, 2023; the statement reflected a regular monthly payment of \$1,267.46. (Exhibit A, p. 14). Petitioner confirmed that amount as his regular monthly payment and on January 30, 2024, the Department properly budgeted his mortgage payment in calculating his excess shelter deduction<sup>1</sup>. (Exhibit A, pp. 1, 26). A FAP group that has heating and other utility expenses, separate from the rental payment, is entitled to a heat and utility (h/u) standard amount to be included in the calculation of the excess shelter deduction. BEM 554, p. 17. The h/u standard is the most favorable utility standard available to a client, and FAP groups that receive the h/u standard do not receive any other individual utility standards. BEM 554, p. 16. The standard amount is \$680. RFT 255 (October 2023). The Department used the amount of \$680 for h/u when calculating Petitioner's excess shelter expense. (Exhibit A, p. 26).

Once Petitioner's housing and utility expenses have been determined, the Department adds the housing expense and h/u standard together for a total shelter amount. The Department then subtracts 50% of Petitioner's AGI from the total shelter amount to determine the amount of Petitioner's excess shelter deduction. Here, Petitioner's housing expense of \$1,267.46 plus the h/u standard of \$680 equal a total shelter expense of \$1,947. Petitioner's total shelter expense, minus 50% of Petitioner's AGI of \$2,684, in the amount of \$1,342, equals an excess shelter amount of \$605. The Department properly subtracted an excess shelter deduction of \$605 from Petitioner's AGI of \$2,684, which determines Petitioner's net monthly income, for purposes of FAP, to be \$2,079. (Exhibit A, pp. 24 – 25). Because this is consistent with the net monthly income amount reached by the Department, the Department's calculation was in accordance with policy.

Once the net monthly income has been determined under the FAP program, the Department determines what benefit amount Petitioner is entitled to, based on the group size, according to the Food Assistance Issuance Table found in RFT 260. Based on Petitioner's one person FAP group size and net income of \$2,079, Petitioner was ineligible for FAP benefits as of March 2024. RFT 260 (October 2023), p. 29.

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<sup>1</sup> The Department had previously budgeted Petitioner's mortgage expense as \$1,409 for the benefit period of June 1, 2023 through October 31, 2023, and \$1,647.46 for the benefit period of January 1, 2024 through January 31, 2024. (Exhibit A, pp. 18, 22).

Therefore, the Department acted in accordance with Department policy in closing Petitioner's FAP case for March 2024 ongoing.

## **FAP OI**

Petitioner also disputed the Department's finding that he was overissued \$654 from September 1, 2023 through February 29, 2024, due to agency error

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).

In this case, the Department testified that Petitioner began receiving RSDI in July 2023. (Exhibit A, p. 1). In contrast, Petitioner testified that he was receiving Supplemental Security Income (SSI) until October 2023, when he began receiving RSDI. The Department alleges that Petitioner received an OI of FAP benefits starting on September 1, 2023 and continuing until February 29, 2024, but did not provide any FAP OI budgets to show that the budgeting of Petitioner's RSDI income would have resulted in Petitioner being ineligible for any portion of the FAP benefits he received. Further, the Department began the OI period in September 2023 based on its conclusion that Petitioner started receiving RSDI income in July 2023, but Petitioner claimed that he did not start receiving RSDI monthly payments until October 2023 and the Department did not provide a copy of the Social Security letter it alleged was the basis for it concluding that RSDI benefits commenced in July.

At the hearing, the Department also alleged that it considered updated mortgage payments in determining the OI for September 2023 through February 2024 but could not explain what was previously budgeted and when the updated mortgage payments were considered in calculating the OI. As stated previously herein, Petitioner provided a mortgage statement, with a due date of October 1, 2023, to the Department on September 28, 2023 (Exhibit A, p. 14)<sup>2</sup>.

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<sup>2</sup> It is noted that the statement Petitioner submitted reflected a payment due October 1, 2023, in the amount of \$1,267.46, and also reflected year to date payments received in the amount of \$44,654.06 through September 8, 2023. The monthly average of the year-to-date amount, over a nine month period, is \$4,961.56. This raises further questions as to what amount the Department should have budgeted and when, given that this average is an amount far greater than the Department's budget reflects for the benefit period of June 1, 2023 through October 31, 2023, and it is unclear as to how much was paid by Petitioner during each month of 2023. (Exhibit A, pp. 18, 22).

The Department testified that it did not include any FAP OI budgets to support the alleged OI because it was relying on the net income budgets provided (Exhibit A, pp. 16 – 17, 20 – 21, 24 – 25) for the various benefit periods. However, the net income budget showing the original FAP issuances fail to establish what, if any, FAP benefits Petitioner received that he was ineligible to receive when the correct income was budgeted. Considering all of the foregoing, the Department failed to satisfy its burden of showing that it acted in accordance with policy when it determined Petitioner received an OI of FAP benefits.

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 properly closed Petitioner's FAP case, effective March 1, 2024 for excess net income, but the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner received an OI of FAP benefits in the amount of \$654 for the period of September 1, 2023 to February 29, 2024.

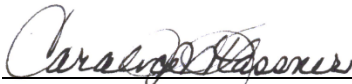
### **DECISION AND ORDER**

Accordingly, the Department's decision is **REVERSED with respect to the \$654 FAP OI for September 2023 to February 2024.**

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 when Petitioner began receiving monthly RSDI payments from SSA;
2. Redetermine what amount, if any, Petitioner was overissued for FAP benefits for from September 1, 2023 through February 29, 2024; and
3. Notify Petitioner of its decision in writing.

CML/nr

  
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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 :**

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