



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: May 10, 2024  
MOAHR Docket No.: 24-003452  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: L. Alisyn Crawford**

### **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 telephone hearing was held on May 1, 2024. Petitioner was present at the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Annette Fullerton, Overpayment Establishment Analyst.

### **ISSUE**

Did Petitioner receive an agency error overissuance (OI) in the amount of \$4,561, for the period of June 1, 2021 through December 31, 2021, for Food Assistance Program (FAP) benefits 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 size of four.
2. In a [REDACTED] 2021 application for FAP benefits, Petitioner reported that he had been laid off and was no longer earning income.
3. On December 14, 2021, the Recoupment Specialist received an Overissuance Referral, DHS 4701, indicating that Petitioner had unreported earnings from [REDACTED] 2021, through [REDACTED], 2021, due to unreported employment income from [REDACTED] (Employer). (Exhibit A, p. 6).

4. The Department determined that Petitioner received a FAP overissuance in the amount of \$4,561 during the time period of [REDACTED] 2021 through [REDACTED], 2021, due to agency error.
5. On March 11, 2024, the Department sent Petitioner a Notice of Overissuance, DHS 4358, and a Department and Client Error Information and Repayment Agreement, DHS 4358C. The notice informed Petitioner that he had received more benefits than he was eligible to receive during the time period of June 1, 2021 through December 31, 2023, in the amount of \$4,561. (Exhibit A, pp. 34-39).
6. On March 20, 2024, Petitioner submitted a request for hearing to the Department disputing the Department's FAP OI determination. (Exhibit A, p. 3).

### **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 he was overissued FAP benefits in the amount of \$4,561 between June 1, 2021 and December 31, 2021 based on Petitioner's failure to report employment income to the Department.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (October 2023), pp. 10-13; 7 CFR 273.12(a)(1); 7 CFR 273.21. Additionally, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2018), p. 1. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or inaccurate information to the Department. BAM 700, pp. 4-6. An agency error OI is caused by incorrect actions by the Department, including delayed or no action, which result in the client receiving more benefits than they were entitled to receive. BAM 700, pp. 4-6. The amount of a FAP OI is the benefit amount the client received minus the

amount the client was eligible to receive. BAM 715 (October 2017), p. 6; 7 CFR 273.18(c)(1).

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). 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 14, 2021 (Exhibit A, p. 7), the Department may properly pursue an OI against Petitioner for the period of June 1, 2021 through December 31, 2021, 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.

Employment income is considered in the calculation of a client's FAP eligibility and amount. BEM 556 (January 2023, pp. 1-8). FAP recipients who are simplified reporters, such as Petitioner, are required to report income only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. BAM 200 (July 2023), p. 1. No other change reporting is required. BAM 200, p. 1. No evidence was presented that confirmed that Petitioner reported his return to work and increased income to the Department.

While the Petitioner failed to report his return to work and increased 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 2020), p. 1; BEM 501 (January 2021), pp. 9-10) when it failed to complete new hire, wage match, and consolidated inquiry reports at the time of the January 2021 FAP Assistance Application (Exhibit A, p. 40). The Department determined Petitioner's FAP group eligibility, and issued benefits based on \$0 in reported earnings for Petitioner, without consideration of Petitioner's actual income. As a result, Petitioner received FAP benefits he was not entitled to receive resulting in the OI. BEM 505 (January 2021), pp. 1, 13-14. Therefore, the Department processed the OI as an agency error.

Due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size would receive a supplement to bring their benefit amount to the maximum for their group size. ESA Memo 2020-15 (March 2020). The State of Michigan issued EA from April 2020 to October 2022. ESA Memo 2022-39 (January 2022). COVID-19 EA were approved for every month during the alleged OI period of. In addition, beginning in May 2021, MDHHS began issuing a minimum \$95 supplement to all FAP households, including households that were already receiving the maximum allotment for their household size. ESA Memo 2021-22 (May 2021). Wrongfully issued EA are recoupable by MDHHS if the FAP household is not eligible for any FAP benefits during the month at issue.

In support of its calculation of an OI, the Department presented monthly OI budgets for each month of the OI period. (Exhibit A, pp. 17-30). The Department testified that it calculated the OI total for the OI period 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, pp. 13-14. To calculate Petitioner's group income for purposes of determining the OI, the Department utilized employment income information for Petitioner from the Work Number database<sup>1</sup>, Wage Match<sup>2</sup>, and Consolidated Inquiry returns.<sup>3</sup> (Exhibit A, pp. 7-11, 16-33).

A review of the OI budgets shows that the Department correctly recalculated Petitioner's gross monthly income based on actual pay for each month at issue. (Exhibit A, pp. 7-11). Because all FAP applicants and recipients are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS), the monthly categorical gross income limit is 200% of the federal poverty level (FPL). RFT 250 (October 2020), Column D. If a FAP group has excess income and is not categorically eligible, it is subject to the FAP gross income limits limiting FAP eligibility to 130% of the FPL. RFT 250, Column A. The FAP gross income limit for a group size of four was \$4,368 during the relevant period. RFT 250, p. 1. Based on the group's earned income during the OI period, Petitioner's FAP group was not eligible for any FAP benefits from June 1, 2021 through November 30, 2021. The Department presented an issuance summary to establish that during the period between June 2021 and November 2021 it issued \$4,561 in recoupable FAP benefits to Petitioner. As for the FAP benefits issued in December 2021, the Department explained that Petitioner was issued \$835 in FAP benefits in December 2021 but had his earned income been included Petitioner would have been eligible for \$674 in FAP benefits for December 2021, which results in an overissuance of \$161. (Exhibit A, p. 16). However, since Petitioner was eligible for FAP benefits in December 2021, the overissuance for that month is not recoupable by the Department.

The Department's FAP OI budgets correctly reflect that Petitioner should not have received any FAP benefits for June, July, August, September, October, and November of 2021 in the amount of \$4,561. (Exhibit A, pp. 16-30; 34-39); see also RFT 250 (October 2020) and RFT 260 (May 2021)). Therefore, the OI of FAP benefits is \$4,561.

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 that an OI of FAP benefits exists for Petitioner, due to agency error, and the Department is entitled to recoup \$4,561 in FAP benefits that were overissued from June 2021 through November 30, 2021.

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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.

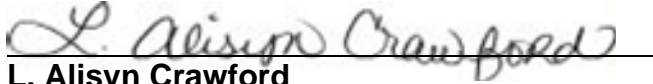
<sup>2</sup> Wage Match references the matching of recipient employment data with the Talent Investment Agency (TIA) and Unemployment Insurance Agency (UIA) through computer data exchanges.

<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.

**DECISION AND ORDER**

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

LC/ml

  
**L. Alisyn Crawford**  
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**

Yaita Turner

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**DHHS Department Rep.**

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**Interested Parties**

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**Via First Class Mail:**

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