



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

Date Mailed: May 20, 2024  
MOAHR Docket No.: 24-004242  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **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 via telephone conference line on May 16, 2024. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Anna Peterson, overpayment analyst.

### **ISSUE**

The issue is whether MDHHS established against Petitioner a recipient claim for Food Assistance Program (FAP) benefits allegedly over-issued 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. On September 19, 2023, Petitioner reported to MDHHS recently started wages from [REDACTED] [REDACTED] [REDACTED] (hereinafter, "Employer").
2. From October through December 2023, Respondent received \$ [REDACTED] in gross wages from Employer.
3. In November 2023, Petitioner received \$951 in FAP benefits based on \$0 wages from Employer.
4. On October 23, 2023, Petitioner's case was referred to the recoupment unit.

5. On March 12, 2024, MDHHS calculated that Petitioner received an OI of \$951 in FAP benefits in November 2023 due to MDHHS's failure to budget Petitioner's wages from Employer.
6. On March 12, 2024, MDHHS sent Petitioner a Notice of Overissuance stating that Petitioner received \$951 in over-issued FAP benefits in November 2023 due to agency error.
7. On April 10, 2024, Petitioner requested a hearing to dispute the alleged OI.

### **CONCLUSIONS OF LAW**

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute MDHHS's attempt to establish a recipient claim for allegedly over-issued FAP benefits. Exhibit A, pp. 4-7. A Notice of Overissuance dated March 12, 2024, alleged that Petitioner received \$951 in over-issued FAP benefits in November 2023 due to agency-error. Exhibit A, pp. 12-17.

An OI is the benefits issued to a client group in excess of what it was eligible to receive. BAM 700 (October 2018) pp. 1-2. When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the OI. *Id.* Recoupment is an MDHHS action to identify and recover a benefit OI. *Id.* A claim is the resulting debt created from an OI of benefits. *Id.*

Federal regulations refer to OIs of FAP benefits as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a). Recipient claim amounts not caused by trafficking are calculated by determining the correct amount of benefits for each month there was an OI and subtracting the correct issuance from the actual issuance.<sup>1</sup> 7 CFR 273.18(c)(1).

Recipient claims may be caused by agency error, unintentional client error, or IPV. 7 CFR 273.18(b). MDHHS may pursue FAP-related agency errors when they exceed \$250. BAM 705 (October 2018) p. 1. Thus, MDHHS may establish a claim against Petitioner if the established OI exceeds \$250.

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<sup>1</sup> Additionally, MDHHS is to subtract any benefits that were expunged (i.e., unused benefits which eventually expire from non-use). There was no evidence that any of the benefits issued to Petitioner were expunged.

Petitioners that request hearings disputing OIs caused by agency error typically contend that they should not be required to repay an OI caused by MDHHS's error. Such an argument is based in equity; in other words, it is unjust to have a client repay benefits over-issued because of the fault of MDHHS. Federal regulations and MDHHS policy each authorize recoupment of FAP benefits even when an OI is caused by MDHHS's error.

Furthermore, there is no known authority from the legislature for a potential remedy based on equity. In the absence of an express legislative conferral of authority, an administrative agency generally lacks the powers of a court of equity. *Delke v Scheuren*, 185 Mich App 326, 332; 460 NW2d 324 (1990). MDHHS is not barred from establishing a claim against Petitioner simply because it caused the OI.

For agency errors, the OI period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the recoupment specialist, whichever period is later. *Id.*, p. 5. Petitioner's case was referred to the recoupment unit on October 23, 2023. Exhibit A, p. 60. Going back 12 months from the referral date allows MDHHS to pursue a claim for agency error beginning November 2022 and later. Thus, MDHHS is not barred from pursuing an OI against Petitioner beginning November 2023.

MDHHS contended that an OI was caused by its failure to timely budget wages for Petitioner. Petitioner reported receiving wages from Employer on September 19, 2023. Exhibit A, pp. 50-51. MDHHS internal reports listed that Petitioner received \$ [REDACTED] in gross wages from Employer during the last quarter of 2023: a monthly average of \$ [REDACTED] Exhibit A, p. 45.

Concerning FAP, for changes reported by means other than a tape match resulting in a benefit decrease, MDHHS must act and issue notice within 10 days of the reported change. BAM 220 (November 2023) p. 12. The result is a benefit effective month beginning the first full month after allowing at least 11 days for timely notice. *Id.*, p. 10. Starting with a reported change date of September 19, 2023, allowing 10 days for MDHHS to process the reported change, and at least 11 days for the change to become effective results in a benefit effective month of November 2023: the same month that MDHHS began (and ended) the OI period.

A claim based on untimely budgeted income requires that unbudgeted income caused an OI. MDHHS presented a FAP-OI budget from November 2023 demonstrating how an OI was calculated. Exhibit A, pp. 21-23. Actual FAP issuances totaling \$951 were taken from documentation of Respondent's FAP issuance history. Exhibit A, p. 20. The overpayment analyst credibly testified that the same group size, income, and expenses from original budgets were used other than including Respondent's average gross monthly wages of \$ [REDACTED] from Employer in the 4<sup>th</sup> quarter of 2023. No errors to the budgets were alleged. Using the budget procedures set forth in BEM 556 for calculating FAP eligibility, an OI of \$951 was calculated.

The evidence established that Petitioner received an OI of \$951 in FAP benefits in November 2023 due to agency-error. Thus, MDHHS established a recipient claim of \$951 against Petitioner for agency error.<sup>2</sup>

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a claim of \$951 for FAP benefits over-issued to Petitioner in November 2023 due to agency error. The MDHHS action to establish against Petitioner a recipient claim is **AFFIRMED**.

CG/nr



**Christian Gardocki**

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

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<sup>2</sup> MDHHS allows for claims to be reduced or eliminated if a household's economic circumstances are such that the overissuance cannot be paid within three years. BAM 725 (January 2021) p. 15. Such requests must be made from the recoupment specialist to the Overpayment, Research and Verification Section office outlining the facts of the situation and the client's financial hardship. *Id.* The manager of the MDHHS Overpayment, Research and Verification Section has final authorization on the determination for all compromised claims. *Id.*

**Via-Electronic Mail :**

**DHHS**

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**Interested Parties**

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**Petitioner**

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