



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: May 24, 2022
MOAHR Docket No.: 22-001740
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on May 16, 2022 via teleconference. Petitioner appeared and was represented himself. Petitioner participated in the hearing with the assistance of an Arabic translator. Minnie Egbuono, Eligibility Specialist, represented the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits based on 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. Petitioner was an ongoing recipient of FAP benefits.
2. On September 16, 2020, Petitioner submitted a FAP Renewal (Exhibit A, pp. 36-40). Petitioner indicated that the household had money and accounts but did not specify the accounts (Exhibit A, p. 37).
3. On September 17, 2021, Petitioner submitted a FAP Renewal (Exhibit A, pp. 31-35). Petitioner reported that the household had \$[REDACTED] in a [REDACTED] checking account (Exhibit A, p. 32).
4. From February 1, 2021 to January 31, 2022 (OI period), Petitioner's FAP group received \$[REDACTED] in ongoing FAP benefits and Emergency Allotments (EA) based on COVID-19 policies (Exhibit A, pp. 15-19).

5. On January 10, 2022, MDHHS sent Petitioner a Notice of Overissuance, indicating that he received more FAP benefits than he was eligible to receive from February 1, 2021 to January 31, 2022 (OI period) (Exhibit A, p. 9). The Notice indicated that the OI was due to client error because the household failed to report assets exceeding \$[REDACTED] (Exhibit A, p. 9). The notice stated that the amount of the OI was \$[REDACTED] (Exhibit A, p. 9).
6. On [REDACTED] 2022, Petitioner filed a Request for Hearing disputing MDHHS' determination that he received an OI of FAP benefits due to client error (Exhibit A, pp. 5-6).

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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, MDHHS determined that Petitioner was overissued \$[REDACTED] in FAP benefits from February 1, 2021 to January 31, 2022 due to client error because Petitioner failed to report all assets to MDHHS. When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the OI as a recipient claim. 7 CFR 273.18(a)(2); BAM 700 (October 2018), p. 1. 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 715 (October 2017), p. 6. An OI can be caused by client error, agency error, or an intentional program violation (IPV). BEM 700, pp. 5-9. An agency error is caused by incorrect action by MDHHS staff or department processes. BEM 700, p. 5. Agency errors are not pursued if less than \$250.00 per program. *Id.* Conversely, a client error occurs when the OI was due to the client giving incorrect or incomplete information to MDHHS. BEM 700, p. 7.

Pursuant to Department policy, there is a FAP asset test for all FAP groups. BEM 400 (January 2021), p. 3. A FAP asset group includes all FAP eligible members and all disqualified members. *Id.*, p. 6. A FAP group's countable assets must be \$15,000.00 or less.¹ *Id.*, pp. 5-6. Savings and checking accounts are considered cash assets. *Id.*, p. 3. An asset must be available to be countable. *Id.*, p. 10. An asset is available if someone in the group has the legal right to use or dispose of the asset. *Id.* MDHHS is required to assume

¹ MDHHS alleged that the FAP asset limit was \$5,000 on the Notice of Overissuance and at the hearing. This is incorrect and based on outdated policy. See Exhibit A, pp. 27-28. For the OI period in question, the FAP asset limit was \$15,000 or less, pursuant to BEM 400 (January 2021), pp. 5-6.

that the asset is available unless evidence shows that it is not available. *Id.* Asset eligibility exists when the group's countable assets are less than or equal to the asset limit at least one day during the month being tested. *Id.*, p. 3. MDHHS will deny an application for FAP if the group has excess assets on the processing date. *Id.*, p. 4.

In this case, MDHHS received a report from the Asset Detection Service that indicated that Petitioner had unreported checking accounts exceeding \$[REDACTED] in value (Exhibit A, pp. 20-22). The Asset Detection report demonstrated that Petitioner was an owner or joint owner on five different checking accounts (Exhibit A, pp. 20-22). MDHHS alleged that at least four of the accounts were unreported. The report included monthly balances of the accounts from December 1, 2020 to November 1, 2021. The lowest monthly balances of each account during the OI period were as follows:

- [REDACTED] checking account ending in [REDACTED]: \$[REDACTED]
- [REDACTED] checking account ending in [REDACTED]: \$[REDACTED]
- [REDACTED] checking account ending in [REDACTED]: \$[REDACTED]
- [REDACTED] checking account ending in [REDACTED]: \$[REDACTED]
- [REDACTED] checking account ending in [REDACTED]: \$[REDACTED]

As described above, the asset limit for the FAP program is \$15,000.00 or less. Given the amount of funds in the accounts, MDHHS has introduced sufficient evidence to show that Petitioner grossly exceeded the asset limit for the program from February 1, 2021 to November 30, 2021. No evidence was introduced to show that the amounts in the accounts were exempt from consideration or were unavailable to Petitioner. Accordingly, the record shows that Petitioner's FAP group was over the asset limit for FAP from February 1, 2021 to November 30, 2021, and thus, ineligible to receive FAP benefits.

MDHHS did not include information showing the balance of the accounts from December 1, 2021 to January 31, 2022. However, Petitioner submitted a FAP Renewal on September 17, 2021, in which he reported that the household had \$[REDACTED] in a [REDACTED] checking account (Exhibit A, p. 32). No other bank accounts were reported, despite Petitioner being an owner or co-owner on four other accounts at the time. If Petitioner would have properly reported his checking account information on the FAP Renewal, MDHHS would have had knowledge that the FAP group was over the asset limit and would have terminated the group's FAP benefits at this point. Due to Petitioner's failure to report the other accounts, MDHHS approved the group for FAP benefits improperly. Thus, MDHHS has shown that Petitioner received more benefits than he was eligible to receive from December 1, 2021 to January 31, 2022 based on his misrepresentation regarding his financial accounts on the September 17, 2021 Renewal. No evidence was presented that the accounts changed substantially and no longer exceeded the asset limit during these months.

MDHHS advised Petitioner of the responsibility to report truthful and accurate information to the department and no evidence was presented to show that Petitioner did not understand this responsibility due to a language barrier or some other reason, or that he had a disability that would have prevented him from understanding or complying with this responsibility. No evidence was presented that Petitioner attempted to report these

accounts to MDHHS. Therefore, the OI was caused by client error because Petitioner did not accurately report his financial situation to MDHHS.

During the OI period, Petitioner's FAP group received \$[REDACTED] in ongoing FAP benefits and Emergency Allotments (EA) based on COVID-19 policies (Exhibit A, pp. 15-19). 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; updated December 2020). The State of Michigan issued EA from April 2020 to December 2021. ESA Memo 2022-02 (January 2022). In addition, beginning in May 2021, MDHHS began issuing a minimum \$[REDACTED] 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.

From January 1, 2021 to September 30, 2021, FAP recipients became eligible for a 15% benefit increase in addition to their monthly allotment and the EA, pursuant to the 2021 Consolidated Appropriations Act, P.L. 116-260 (Appropriations Act), and extended by the American Rescue Plan, P.L. 117-2. Under Section 702(b)(4) of the Appropriations Act, the 15% benefit increase is not subject to recoupment. When requesting recoupment of FAP benefits from January 1, 2021 to September 30, 2021, MDHHS is required to explain how it calculated the OI amount, less the 15% benefit increase. See United States Department of Agriculture, Supplemental Nutrition Assistance Program (SNAP), Consolidated Appropriations Act, 2021 – Questions and Answers (February 19, 2021), available at <<https://www.fns.usda.gov/snap/provisions-consolidated-appropriations-act-2021>> (accessed May 23, 2022).

As described above, Petitioner's FAP group was not eligible for any FAP benefits during the OI period due to excess assets and misreporting financial information to MDHHS. MDHHS alleged that Petitioner was overissued \$[REDACTED] in FAP benefits, which represented the ongoing benefit rate and the EA. MDHHS introduced evidence to show that it excluded the 15% benefit increase from the OI amount. Because Petitioner was not eligible for any FAP benefits during the OI period, MDHHS is entitled to repayment from Petitioner in the amount of \$[REDACTED].

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 MDHHS acted in accordance with Department policy when it determined that Petitioner received an OI of FAP benefits due to client error.

DECISION AND ORDER

Accordingly, MDHHS decision is **AFFIRMED**.

LJ/tm


Linda Jordan
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 Email:

MDHHS-Wayne-15-Hearings
M. Holden
D. Sweeney
MDHHS-Recoupment-Hearings
BSC4
MOAHR

Petitioner – Via First-Class Mail:

██████████
████████████████████
██████████ MI ██████████