



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: October 13, 2022  
MOAHR Docket No.: 22-004082  
Agency No.: ██████████  
Petitioner: ██████████ ██████████

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

### **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 October 6, 2022, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Tracy Upshaw, Recoupment Specialist.

### **ISSUE**

Did Petitioner receive a client error overissuance (OI) of 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. Petitioner was an ongoing recipient of FAP benefits.
2. On or around January 31, 2020, Petitioner submitted a redetermination for her FAP eligibility to be reviewed. On the redetermination, Petitioner reported that her household consisted of herself, and her daughter Child A. Petitioner reported that she receives Social Security and child support income. (Exhibit A, pp. 48-55)
3. On or around ██████████ 2021, Petitioner submitted an application requesting State Emergency Relief (SER) assistance. On the application, Petitioner reported that her household consisted of herself, and Child A. Petitioner reported that her daughter is employed with Family Dollar (Employer) and is paid once every two weeks. (Exhibit A, pp. 56-61)

4. The Department obtained information from the Work Number showing that Child A became employed with Employer in August 2020 and received her first paycheck on or around August 28, 2020. Child A continued to be employed and earning income through July 2021. (Exhibit A, pp. 42-44)
5. On or around January 14, 2022, the Department sent Petitioner a Notice of Overissuance informing her that she received a client error caused OI of FAP benefits in the amount of \$3,701, for the period of October 1, 2020, through July 31, 2021, because she failed to timely report Child A's employment with and income from Employer. (Exhibit A, pp. 8-13)
6. On January 24, 2022, Petitioner requested a hearing disputing the Department's actions. (Exhibit A, pp.3-6)

### **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.

In this case, on January 14, 2022, the Department sent Petitioner a Notice of Overissuance informing her that she received a client error caused OI of FAP benefits in the amount of \$3,701 for the period of October 1, 2020, through July 31, 2021, because she failed to timely report Child A's income from Employer.

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 (July 2020), pp. 9-12; 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 OI. 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 the overissuance is the benefit amount the group actually received minus the

amount the group was eligible to receive. BAM 715 (October 2017), p. 6; BAM 705 (October 2018), p. 6.

The Department asserted that although Petitioner reported Child A's income on the June 2021 SER application, because the income was not timely reported within 10 days of Child A's first paycheck, the OI in this case was a result of client error. Petitioner disputed the Department's testimony and testified that she reported Child A's income one week after the child gained employment. Petitioner asserted that she and Child A sent in copies of pay stubs to the Department. However, the Department reviewed its system and testified that no income verification or pay stubs were received and the Department first became aware of Child A's income in June 2021. No evidence of a completed change report, pay stubs, or other documentation supporting Petitioner's testimony was presented for review during the hearing.

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 September 2022. ESA Memo 2022-39 (January 2022). COVID-19 EA were approved for every month during the alleged fraud period. 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.

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 October 11, 2022).

The Department presented a benefit summary inquiry to establish that during the period between October 2020 and July 2021, it issued \$3,701 in recoupable FAP benefits to Petitioner. (Exhibit A, p. 15-19). The benefit summary inquiry for some months in the OI period includes an ongoing monthly payment and two supplemental payments. The Department representative explained that in calculating the OI, it considered the only the ongoing monthly allotment issued to Petitioner and the EA supplements referenced above. Upon review of the benefit summary inquiry for the OI time period between January 1, 2021, and July 31, 2021, the Department did not include the 15% benefit

increase supplement identified above, as it is not subject to recoupment. Additionally, the Department representative testified that the Department did not seek to recoup any overissued FAP benefits for the month of February 2021 because Petitioner was not completely ineligible for assistance.

In support of its OI case, the Department presented the Work Number, verifying that Child A had earnings from Employer beginning on or around August 28, 2020. It was also established that in consideration of Child A's first pay date, the Department properly determined that the first month in the OI period would be October 2020, as the Department is to apply the 10-day client reporting period, the 10-day processing period, and the 12-day negative action suspense period.

The Department also presented FAP OI budgets for each month in the over issuance period showing how Child A's unreported earned income was calculated each month and how the total OI amount was determined. Upon review, after including Child A's unreported earned income in the calculation of Petitioner's household FAP eligibility, Petitioner's group was eligible to receive \$0, in FAP benefits during the period of October 2020 through January 2021 and March 2021 through July 2021, which resulted in an OI of FAP benefits in the amount of \$3,701.

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 established a client error FAP benefits OI to petitioner in the amount of \$3,701.

### **DECISION AND ORDER**

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

The Department is **ORDERED** to initiate recoupment and/or collection procedures for a \$3,701 client error FAP OI in accordance with Department policy, less any amount that has already been recouped/collected.

ZB/ml

  
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**Zainab A. Baydoun**  
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**  
Chelsea McCune  
Macomb County DHHS Warren Dist.  
27690 Van Dyke  
Warren, MI 48093  
**MDHHS-Macomb-20-Hearings@michigan.gov**

Overpayment Research and Verification (ORV)  
235 S Grand Ave  
Lansing, MI 48909  
**MDHHS-RECOUPMENT-  
HEARINGS@Michigan.gov**

**Interested Parties**

BSC4  
M. Holden  
D. Sweeney  
MOAHR

**Via First Class Mail :**

**Petitioner**

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