



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: November 18, 2022
MOAHR Docket No.: 22-004287
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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, telephone hearings were held on October 19, 2022 and November 9, 2022. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Hayat Nagi, Family Independence Manager; Jeff Wyman, Accounts Receivable Manager; Deborah Pierce-Field, Accounts Receivable Recoupment; and Irma Carro, Accounts Receivable Assistant.

ISSUE

Did the Department properly recoup \$8,575.00 from Petitioner for previously paid Family Independence Program (FIP) benefits?

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 has been a FIP recipient for himself and his daughter since at least September 2019.
2. In [REDACTED] of 2019, Petitioner submitted an application to the Social Security Administration (SSA) for disability benefits.
3. On September 12, 2022, SSA paid the Department \$8,575.00 for FIP benefits previously received from money owed to Petitioner for retroactive SSI benefits.
4. On September 15, 2022, the SSA issued a letter to Petitioner informing him that he had been approved for \$841.00 per month in SSI benefits, that he was due back

money of \$27,194.00, and that SSA had paid the Department \$8,575.00 for assistance Petitioner had previously agreed to repay.

5. On September 20, 2022, the Department received Petitioner's request for hearing disputing the amount owed for repayment of FIP benefits.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

In this case, Petitioner received notification from SSA on September 15, 2022 that he was eligible for SSI benefits and that he would be issued retroactive payments in the amount of \$27,194.00. Petitioner was also advised that \$8,575.00 of his retroactive payment was being withheld for repayment to the Department. Petitioner submitted a request for hearing disputing the amount of funds that were withheld for repayment to the Department.

State-funded FIP and SDA clients must sign an agreement to repay interim assistance when pursuing a potential benefit. BEM 272 (January 2018), p. 1. Repay agreements are required for most lump sum payments (for example, inheritances, insurance settlements) and accumulated benefits paid retroactively (for example, Supplemental Security Income (SSI), Unemployment Compensation, Workers Compensation). BEM 272, p. 1. The client must repay the regular, vendored and supplemental state-funded FIP and/or SDA, including SLA provider payments (BAM 430), paid during the interim assistance period. BEM 272, p. 4. The repay amount is one of the following: (i) for lump sum payments (example: insurance settlement), the SDA amount owed or the lump sum, whichever is less or (ii) for accumulated benefits (example: retroactive SSI), the state-funded FIP and/or SDA amount owed or the windfall amount covering the interim assistance period, whichever is less. BEM 272, p. 4. The repay amount from retroactive SSI reflects only the interim assistance to the SSI individual. BEM 272, p. 4. When SSI is received by a client in a two-or-more person eligible group, the Department will determine the amount to be repaid by calculating the interim state-funded FIP amount for all clients, disregarding any income, for each month in the interim assistance period and deduct the amount a FIP group would be entitled to receive less one person. BEM 272, p. 5.

The Department presented a Spreadsheet to establish how it reached the figure of \$8,575.00. (Exhibit B). For the period of November 2019 through September 2022, Petitioner received a FIP grant of \$403 per month (Exhibit 1, p. 4; Exhibit A, pp. 94-98; Exhibit B). Petitioner was a member of a FIP group that consisted of himself and his son. As Petitioner was not receiving SSI during that period, he was an eligible grantee. BEM 515 (January 2022), p. 2. A FIP group of two with an eligible grantee is entitled to a FIP grant of \$403 per month. RFT 210 (April 2017), p. 1. The Department determined that because Petitioner received a retroactive SSI payment for the period of October 2019 through September 2022, he should have been considered an ineligible grantee and should have only received a FIP grant of \$158 per month for his son during that period. BEM 515, p. 2 and RFT 210, p. 1. The difference between the amount Petitioner received as an eligible grantee and the amount he should have received as a retroactive ineligible grantee is \$245. According to the Spreadsheet, the Department determined Petitioner was not entitled to \$245 per month in FIP benefits for the period of November 2019 through September 2022, which totals \$8,575.00.

At the hearing, Petitioner disputed the Department's calculation of the amount of FIP benefits that were to be repaid. Petitioner testified that during the period in question, he was receiving child support payments for his son. However, the child support payments were assigned to the Department in whole or in part. Effective January 2020, child support client participation payments are payments issued to a current or former FIP recipient based on certified child support collections, the first \$100.00 of court-ordered child support collected on behalf of a FIP eligible family with one child is sent to the custodial parent named in the court order. BEM 503 (January 2020, April 2022), p. 9 At the hearing, the Department witness claimed they had no knowledge of how assigned child support affected the calculation of FIP recoupments after an SSI retroactive payment. Petitioner submitted a Michigan Child Support Enforcement System Custodial Parent Financial Detail Report showing \$10,935.49 being assigned to the Department since October 2019. Petitioner argued that the child support that was being assigned to the Department should have been considered in the calculation of the amount of FIP benefits that were to be repaid to the Department.

Assignment is the agreement of the head of household or parent to give to the state all rights to current and future court-ordered child support paid on behalf of a FIP recipient for the same time period. BEM 255 (January 2020), pp. 16-17. Under the Michigan Administrative Rules governing FIP benefits, the Department is to adjust FIP overissuance amounts by subtracting all or part of any assigned current child support payments retained by the state during the overissuance period. Mich Admin Code, R 400.3129. Michigan Administrative Rule 29 further states that if the FIP group was ineligible for program benefits during the overissuance period, then the full amount of support retained by the state is subtracted but if the group was eligible for part of the FIP benefits issued, then the portion of child support retained by the state in excess of the amount the group was eligible for will be subtracted. Mich Admin Code, R 400.3129. The Department incorporated the language from Rule 29 in its policy governing agency error overissuances. An agency error is caused by incorrect action by Department staff or department processing. BAM 700 (October 2018), p. 5. A client error occurs when

the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 7. If the Department is unable to identify the type of overissuance, it will record it as an agency error. BAM 705 (October 2018), p. 1. For agency errors, the Department will adjust FIP overissuances by the amount of assigned support received. BAM 705, pp. 8-9. If the group was ineligible for FIP during the overissuance period, the Department will subtract the net support collections retained. BAM 705, p. 8. If the group was eligible for part of the FIP benefits issued, the Department will subtract the portion of the net support collections retained in excess of what the group was eligible to receive. *Id.*

Although BEM 272 does not specifically define the amount to be repaid as an “overissuance,” the Department is entitled to have FIP benefits repaid after a person becomes retroactively eligible for SSI, because the group received more benefits than they were entitled to during the period of SSI retroactivity. When the Department recoups/collects benefits that a group was not entitled to receive, its known as an overissuance. BAM 700, p. 1. Therefore, the laws and policies governing overissuances should apply to the amount of repaid FIP benefits deducted from a client’s retroactive SSI payment.

Petitioner’s overissuance/repayment was not a result of agency error. However, it was also not a result of client error. Therefore, the overissuance/repayment cannot be identified and should automatically be considered an agency error. Additionally, Rule 29 does not distinguish between agency and client errors in the language pertaining the adjustment of FIP overissuances by the amount of child support retained by the state. Thus, the Department should have adjusted the amount of FIP benefits to be repaid by the amount of child support assigned to the Department. According to the spreadsheet, the Department did not offset the amount of FIP benefits that were to be repaid by the amount of child support that was assigned to the Department. Therefore, the Department did not act in accordance with policy when calculating the amount of FIP benefits that were repaid to the Department that was deducted from Petitioner’s SSI retroactive payment.

DECISION AND ORDER

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 did not act in accordance with Department policy when it calculated the amount of FIP benefits to be repaid by Petitioner that was deducted from his retroactive SSI payment.

Accordingly, the Department’s decision is **REVERSED**.

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. Recalculate the amount of FIP benefits to be repaid by Petitioner to the Department in accordance with Department policy;
2. If applicable, issue supplements to Petitioner that he is entitled to receive in accordance with Department policy; and,
3. Notify Petitioner of its decision in writing.

AMTM/cc



Amanda M. T. Marler
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 :

Interested Parties

MDHHS-Macomb-20-Hearings
BSC4-HearingDecisions
B. Sanborn
MOAHR

Via-First Class Mail :

Petitioner

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