



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: July 27, 2023
MOAHR Docket No.: 23-003476
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 July 24, 2023. Petitioner appeared and represented himself. The Department of Health and Human Services (MDHHS) was represented by Kathleen Zewatsky, Recoupment Specialist.

ISSUE

Did MDHHS properly determine that Petitioner had been overissued Food Assistance Program (FAP) benefits due to 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. On November 18, 2020, Petitioner began to work for [REDACTED] (Employer), receiving his first paycheck on December 2, 2020. As of April 19, 2023, Petitioner was still actively employed (Exhibit A, pp. 38-57).
2. On [REDACTED] 2021, Petitioner applied for FAP benefits for a group size of three, consisting of his wife, [REDACTED] (Wife), minor child, and himself. Petitioner reported that he worked for Employer (Exhibit A, pp. 65-72).
3. On February 21, 2021, Wife began to receive unemployment compensation benefits (UCB), receiving weekly unearned income through August 7, 2021 (Exhibit A, pp. 59-61).
4. On March 15, 2021, MDHHS issued a Notice of Case Action to Petitioner, informing him that he was approved to receive FAP benefits for a group size of

three, based upon \$ [REDACTED] in earned income and \$0.00 in unearned income. MDHHS notified Petitioner that he is a Simplified Reporter and that the only change that he is responsible to report for FAP is if his household income exceeds the limit of \$2,353.00 (Exhibit A, pp. 28-35).

5. On August 26, 2021, Petitioner submitted a renewal of benefits form to MDHHS, reporting that he was working for Employer (Exhibit A, pp. 63-64).
6. From December 1, 2020 to June 30, 2021, Petitioner was issued \$5,096.00 in FAP benefits for a four person group, consisting of his three minor daughters and himself (Exhibit A, p. 16-18).
7. On April 26, 2023, MDHHS issued a Notice of Overissuance to Petitioner informing him that he was overissued FAP benefits from May 1, 2021 through September 30, 2021 in the amount of \$3,044.00. The overissuance (OI) was determined to be due to client error for Petitioner's failure to report exceeding the simplified reporting limit when Wife began to receive UCB (Exhibit A, pp. 8-13).
8. On June 23, 2023, Petitioner submitted a hearing to dispute that he was overissued FAP benefits due to a client error (Exhibit A, pp. 4-6).

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, Petitioner requested a hearing to dispute that he was overissued FAP benefits due to a client error. MDHHS contends Petitioner failed to report exceeding the simplified reporting limit from May 1, 2021 through September 30, 2021 (OI period).

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), pp. 1-2. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to MDHHS. BAM 700, p. 6. An agency error OI is caused by incorrect actions by MDHHS, including delayed or no action, which result in the client receiving more benefits than they were entitled to receive. BAM 700, p. 4. Here, MDHHS asserts that Petitioner exceeded the

simplified reporting limit during each month of the OI period and failed to report those excess earnings to MDHHS. Simplified reporters are only required to report when the group's actual gross monthly income (not converted) exceeds the simplified reporting limit for their group size. BAM 200 (January 2021) p. 1. The simplified reporting limit is equal to the gross income limit for the group size. BAM 200, p. 2. For a FAP group size of three, the simplified reporting limit was \$2,353.00 during the OI period. RFT 250 (October 2020), p. 1, Column E. For failures in reporting income over the simplified reporting limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. BAM 200, pp. 5-6.

MDHHS determined whether Petitioner exceeded the simplified reporting limit, and therefore received an OI of FAP benefits, by including Petitioner's earned income information received directly from Employer (see Exhibit A, pp. 38-57) and Wife's unearned income from UCB (see Exhibit A, pp. 59-61) in Petitioner's FAP budget. MDHHS testified that these were the only changes made to Petitioner's FAP budget (see Exhibit A, pp. 17-27). MDHHS determined that had this income been included in Petitioner's household budget, the household would not have been eligible to receive FAP benefits. A review of Petitioner's household income during the OI period shows that, for each month, the household had income in excess of the simplified reporting limit and gross income limit for FAP eligibility. Since Petitioner exceeded the simplified reporting limit and failed to report this to MDHHS, the OI is due to client error. Petitioner first exceeded the simplified reporting limit in March 2021. Allowing for two months to report, MDHHS properly determined the OI period to begin May 2021. Petitioner's FAP case closed September 2021, when MDHHS ended the OI period. Therefore, MDHHS properly determined the OI period.

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). 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.

In reviewing the overissuance budgets in this case, MDHHS properly excluded the 15% supplement when calculating the FAP benefits that they are attempting to recoup from Petitioner (see Exhibit A, pp. 15-16). A review of the overissuance budgets presented show that MDHHS properly calculated that Petitioner would not have been eligible for \$3,044.00 in FAP benefits during the OI period due to excess gross income. Since Petitioner was issued \$3,044.00 in FAP benefits, excluding non-recoupable supplements, MDHHS is entitled to recoup \$3,044.00 in overissued FAP benefits.

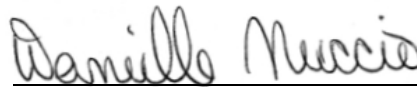
At the hearing, Petitioner expressed concerns about paying the OI amount. Individuals who do not have active benefits can pay OI balances by lump-sum or monthly cash payments. BAM 725 (January 2021), p. 9. Collection actions can also be suspended in certain circumstances. *Id.*, pp. 13-14. Additionally, MDHHS can compromise (reduce or eliminate) an OI if it is determined that a household's economic circumstances are such that the OI cannot be paid within three years. *Id.*, p. 16. A request for a policy exception 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 (Send to: Overpayment Recovery and State Psychiatric Hospital Reimbursement Division Overpayment Research and Verification Section Suite 1011 235 S. Grand Ave P.O. Box 30037 Lansing, MI 48909). *Id.*, pp. 16-17.

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 MDHHS acted in accordance with Department policy when it determined that Petitioner received an OI of FAP benefits in the amount of \$3,044.00 due to client error.

DECISION AND ORDER

Accordingly, MDHHS' decision is **AFFIRMED**.

DN/mp



Danielle Nuccio

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-Recoupment-Hearings
MDHHS-Jackson-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner

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