



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 25, 2023
MOAHR Docket No.: 23-006022
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 October 23, 2023. Petitioner appeared and represented himself. The Department of Health and Human Services (MDHHS) was represented by Minnie Egbunu, Overpayment Establishment Analyst.

At the hearing, an 87-page hearing packet was introduced into evidence as MDHHS Exhibit A. The pagination notated in the lower right-hand corner did not include the exhibit pages. Exhibit A, as referenced herein, is a renumbered hearing packet to include all pages.

ISSUE

Did MDHHS properly determine that Petitioner had been overissued Food Assistance Program (FAP) benefits due to agency error (AE)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Effective February 1, 2020, Petitioner began receiving FAP for a group size of two, consisting of his wife, [REDACTED] (Wife), and himself.
2. Petitioner receives monthly income from Retirement, Survivors, and Disability Insurance (RSDI) (Exhibit A, pp. 64-66).
3. Wife is employed at [REDACTED] (Employer) since 2011 (Exhibit A, pp. 57-62).

4. On July 19, 2020, MDHHS discovered Wife's employment via a Wage Match. MDHHS did not include Wife's employment income into the FAP budget when determining the household's eligibility for FAP benefits (Exhibit A, p. 71).
5. From October 1, 2022 through September 30, 2023, Petitioner was issued \$6,612.00 in FAP benefits for a group size of two (Exhibit A, pp. 21-23).
6. On September 15, 2023, MDHHS referred this case to the Recoupment Specialist for review (Exhibit A, p. 87).
7. On September 18, 2023, MDHHS issued a Notice of Overissuance to Petitioner informing him that he was overissued FAP benefits from October 1, 2022 through September 30, 2023 in the amount of \$6,612.00. The overissuance (OI) was deemed due to agency error (AE) because MDHHS failed to timely budget Wife's income from employment. Therefore, Petitioner was approved to receive more FAP benefits than he was eligible for that MDHHS is now attempting to recoup (Exhibit A, pp. 12-17).
8. On September 22, 2023, MDHHS received Petitioner's timely submitted hearing request to dispute that he must repay overissued FAP benefits due to agency error (Exhibit A, pp. 7-8).

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 disputing that he must repay overissued FAP benefits due to MDHHS error.

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. 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. 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 concedes that the OI occurred due to agency error for improperly failing to update Petitioner's FAP budget with Wife's reported income from employment. Spouses who are legally married and live together must be in the same FAP group. Since Wife and Petitioner are married, she was required to be part of his FAP group, and her income considered in the household FAP budget.

The amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, pp. 4-6; BAM 705 (October 2018), pp. 1-6. The overissuance period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the recoupment specialist, whichever 12-month period is later. BAM 705, p. 5. MDHHS testified that since the overissuance was referred to the recoupment specialist on September 15, 2023, the OI period began 12 months prior on October 1, 2022. Petitioner's FAP case was updated to accurately reflect his group size and income, effective October 1, 2023. Therefore, MDHHS acted in accordance with policy in determining that the OI period is October 1, 2022 through September 30, 2023.

MDHHS calculated the OI total for this period by calculating what Petitioner's FAP budget would have been had Wife's earned income from Employer been included in the household budget (see Exhibit A, pp. 32-55). MDHHS obtained Wife's employment income information via the Work Number database and entered her actual income received into the household budget (see Exhibit A, pp. 57-62). MDHHS included the 20% earned income deduction pursuant to BEM 556 as well. MDHHS testified that these were the only changes to Petitioner's FAP budget when calculating the OI budget versus the original budget was including this income information.

Upon review, Petitioner was not eligible to receive any FAP benefits during the OI period due to excess income. Since Petitioner was not eligible to receive FAP benefits, all benefits issued to his household were overissued. Since Petitioner was issued \$6,612.00 in FAP benefits, MDHHS is entitled to recoup \$6,612.00 from Petitioner.

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

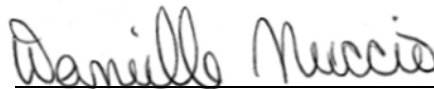
30037 Lansing, MI 48909). *Id.*, pp. 16-17. Clients may call 1-800-419-3328 for further information on a hardship waiver.

Despite the overissued benefits being due to agency error, MDHHS nevertheless is entitled to recoup benefits that were overissued. 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 Petitioner received a FAP OI totaling \$6,612.00.

DECISION AND ORDER

Accordingly, the Department's 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-Wayne-17-hearings

D. Sweeney

M. Hoden

MOAHR

BSC4

Via-First Class Mail :

MI