



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



Date Mailed: October 11, 2023
MOAHR Docket No.: 23-005599
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 5, 2023. Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Kathleen Zewatsky, Overpayment Establishment Analyst.

ISSUE

Did Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits that MDHHS 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 for a group size of three. Petitioner is not categorized as a Senior/Disabled/Veteran (S/D/V) FAP group.
2. Petitioner reported to MDHHS that she was on Family Medical Leave Act (FMLA) leave from [REDACTED], DDS (Employer) at the time of her FAP application.
3. Petitioner returned to work, receiving her first paycheck on July 15, 2021.
4. A New Hire report was to be completed and submitted to MDHHS by August 16, 2021, but, due to agency error, MDHHS did not take action on this report.

5. On August 31, 2023, MDHHS issued a Notice of Overissuance to Petitioner informing her that MDHHS had determined that she received an Agency Error Overissuance from October 1, 2021 through April 30, 2022 in the amount of \$4,518.00 because MDHHS had failed to include Petitioners earned income from employment into her FAP budget (Exhibit A, pp. 7-12).
6. On September 11, 2023, Petitioner requested a hearing to dispute MDHHS' recoupment of overissued FAP benefits due to agency error.

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 [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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner disputes the recoupment of overissued FAP benefits due to agency error, from October 1, 2021 through April 30, 2022 in the amount of \$4,518.00.

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. 1-2. 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. BAM 705 (October 2018), p. 1. Here, MDHHS concedes that the Department failed to take action when Petitioner returned to work for Employer. Therefore, any OI resulted from agency error.

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. To determine the first month of the overissuance period for changes reported timely and not acted on by MDHHS, Bridges, MDHHS's internal database allows time for the full standard of promptness (SOP) for change processing. BAM 705, p. 5. MDHHS testified that since the New Hire Report was due to be completed on August 16, 2021, MDHHS applied the "10 10 12 rule" to determine the start of the OI

period. Meaning, action must be taken, and notice issued to the client, within the SOP of 10 days. The effective month is the first full month that begins after the negative action effective date. BEM 505 (January 2021), p. 11. MDHHS then has ten days to process the change and, if it results in a decrease in benefits, it gives the client 12 days before the negative action impacts the benefits issued. BAM 220 (January 2021), pp. 7, 12. Therefore, the OI period begins October 1, 2021. Petitioner's FAP case closed on May 1, 2022, ending the OI period on April 30, 2022. Therefore, MDHHS acted in accordance with policy in determining Petitioner's OI period.

MDHHS calculated the OI total for this period by calculating what Petitioner's FAP budget would have been had her earned income from Employer been included in the household budget (see Exhibit A, pp. 18-31). MDHHS obtained Petitioner's employment income information from the Work Number database (see Exhibit A, pp. 43-46). The Work Number is a tool provided by Equifax Verification Services that MDHHS uses to verify clients' employment information through wage matches. MDHHS testified that the only change in Petitioner's FAP budget when calculating the OI budget versus the original budget was including this income information. MDHHS testified that during the OI period, Petitioner was not eligible for any FAP benefits due to excess gross income, with the exception of February 2022. A review of the overissuance budgets presented show that MDHHS properly calculated that Petitioner would not have been eligible for FAP benefits during the OI period due to excess gross income. Therefore, all FAP benefits issued to Petitioner were overissued during the OI period. Since Petitioner was issued \$4,518.00 in FAP benefits, MDHHS is entitled to recoup \$4,518.00 in overissued FAP benefits. Despite the overissued benefits being due to agency error, MDHHS nevertheless is entitled to recoup benefits that were overissued.

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.

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 \$4,518.00.

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]