



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 7, 2024
MOAHR Docket No.: 23-010046
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 July 29, 2024, from Detroit, Michigan. Petitioner appeared for the hearing and was represented by attorney Cherika Harris. The Department of Health and Human Services (Department) was represented by Assistant Attorney General (AAG) Melissa Bianchi, who called Eugene Brown, Overpayment Establishment Analyst as a witness. The Department presented Exhibit A, pp. 1-74, which was admitted into the record as evidence.

ISSUE

Did Petitioner receive an agency 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. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed.
2. On or around December 4, 2019, the Department sent Petitioner a redetermination for her FAP case that she was instructed to complete and return to the Department by January 2, 2020. (Exhibit A, pp. 24-31)
 - a. Petitioner timely returned the redetermination to the Department. On the redetermination, Petitioner reported that she was employed and earning income biweekly. Petitioner also reported that her husband Richard White was employed with [REDACTED] and earning income of [REDACTED] weekly. (Exhibit A, pp. 24-31)

3. On or around January 23, 2020, the Department sent Petitioner a Verification Checklist (VCL) instructing her to submit proof of her vendor pre-paid debit card, as well as verification of the last 30 days of her husband's income and employment from [REDACTED]. Petitioner was instructed to submit the verifications to the Department by February 3, 2020. (Exhibit A, pp. 22-23)
4. On January 23, 2020, Petitioner submitted verification of her husband's income to the Department showing that he was paid [REDACTED] weekly on December 3, 2019, December 10, 2019, December 17, 2019, December 24, 2019, December 31, 2019, and January 7, 2020. (Exhibit A, pp. 64-65)
5. The Department processed the redetermination and on January 24, 2020, sent Petitioner a Notice of Case Action advising her that she was approved for ongoing FAP benefits for the benefit period of February 1, 2020, through January 31, 2021. (Exhibit A, pp. 32-38)
 - a. The Notice of Case Action also informed Petitioner that her household was approved for FAP benefits as Simplified Reporters and that effective January 24, 2020, for the FAP, she was not required to report any changes until her next redetermination/semi-annual contact. (Exhibit A, pp. 32-38)
6. On June 2, 2020, Petitioner completed a renewal/redetermination for her FAP case. Petitioner reported that her husband's employment with and income from [REDACTED] was unchanged. (Exhibit A, pp. 44-45)
7. On or around June 30, 2020, the Department sent Petitioner a Notice of Case Action advising her that her household was approved for FAP benefits in the amount of \$352, effective August 1, 2020. (Exhibit A, pp. 46-50)
8. On or around December 14, 2020, Petitioner completed a renewal/redetermination for her FAP case, on which she reported that her husband continued to be employed with [REDACTED] (Exhibit A, pp. 51-53)
9. On or around January 6, 2021, the Department sent Petitioner a VCL instructing her to submit updated earned income information by January 19, 2021. (Exhibit A, pp. 54-55)
10. On or around January 19, 2021, the Department sent Petitioner a Notice of Case Action advising her that her household was approved for FAP benefits in the amount of \$680, effective February 1, 2021. (Exhibit A, pp. 56-60)
11. On or around January 30, 2023, the Department sent Petitioner a Notice of Overissuance informing her that she received an agency error caused OI of FAP benefits in the amount of \$6,644, for the period of March 1, 2020, through January 31, 2021, because the Department did not address Petitioner's failure to return required verification regarding her spouse's income from [REDACTED]

██████████ for the period of December 25, 2019, through January 23, 2020. (Exhibit A, pp. 8-14)

12. On or around March 16, 2023, Petitioner requested a hearing disputing the Department's actions with respect to the OI. (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.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. 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.

In this case, on or around January 30, 2023, the Department sent Petitioner a Notice of Overissuance informing her that she received an agency error caused OI of FAP benefits in the amount of \$6,644, for the period of March 1, 2020, through January 31, 2021, because the Department did not address Petitioner's failure to return required verification regarding her spouse's income from ██████████ for the period of December 25, 2019, through January 23, 2020. (Exhibit A, pp. 8-14).

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p.1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. Although the client must obtain the required verification, the Department must assist if a client needs and requests help. If neither the client nor the Department can obtain the verification despite a reasonable effort, the Department is to use the best available information; and if no evidence is available, the Department is to use its best judgment. BAM 130, p. 3.

For FAP cases, clients are given 10 calendar days to provide the verifications requested by the Department. Verifications are considered to be timely if received by the date they are due. At redetermination, FAP clients have until the last day of the redetermination month or 10 days, whichever is later to provide the verifications. See BAM 210. The Department sends a negative action notice when the client indicates a refusal to provide a verification **or** the time period given has elapsed and the client has **not** made a reasonable effort to provide it. BAM 130, pp. 7-8.

Mr. Brown, the Overpayment Establishment Analyst testified that this case came to his attention because on or around January 7, 2021, the Department completed an Overissuance Referral, indicating that from March 2020 through December 2020, the household received unemployment compensation benefits (UCB) and failed to report the unearned income on the June 2020 redetermination. (Exhibit A, p. 74). Mr. Brown testified that the Overissuance Referral was forwarded to the Office of Inspector General (OIG), who determined that the matter was an agency error, and not client error, as the Department should have been aware of the household's receipt of UCB. Mr. Brown testified that upon his review, however, he determined that Petitioner failed to submit sufficient verification of her husband's income in connection with the December 2019 redetermination and the January 23, 2020, VCL. The Department asserted that although on January 23, 2020, Petitioner submitted proof of her husband's income for the time period of December 3, 2019, through January 7, 2020, she failed to submit paychecks for the pay dates of January 14, 2020, and January 21, 2020. The Department asserted that Petitioner's FAP case should have closed due to a failure to verify requested income information. Mr. Brown testified that because the Department failed to timely close Petitioner's FAP case, her household continued to receive FAP benefits that she was not eligible to receive. The Department alleged that Petitioner's household received \$6,644 in FAP benefits during the period between March 2020 and January 2021 and that the household was eligible for \$0 in FAP benefits during this period.

It was established that on the December 2019 redetermination submitted to the Department, Petitioner accurately reported that her husband was employed with [REDACTED] and was paid [REDACTED] weekly. It was also established that in connection with the redetermination and the January 23, 2020, VCL, Petitioner timely submitted proof of Mr. White's income for the six-week period between December 3, 2019, and January 7, 2020, (greater than 30 days), which again indicated that he was paid [REDACTED] weekly. There was no evidence that Petitioner was made aware that the paystubs she submitted were insufficient to satisfy the Department's request for verifications. The Department did not inform Petitioner that it was missing the two additional two paystubs from January 14, 2020, and January 21, 2020, despite the due date of the VCL being February 3, 2020, and Petitioner having additional time to comply with the Department's request for verifications and in light of the subsequent processing policy in BAM 115. Additionally, Petitioner was notified in the January 24, 2020, Notice of Case Action that her household was subject to the rules/policies for simplified reporters and thus, she was not required to report any changes until her next redetermination/semi-annual contact. (Exhibit A, pp. 32-38).

Furthermore, Mr. Brown conceded that Petitioner's husband was paid [REDACTED] on January 14, 2020, and January 21, 2020, as confirmed by the paystubs that were later submitted to the Department in January 2021. The Department did not present any evidence of Petitioner's income eligibility for FAP during the alleged OI period. There was no evidence presented by the Department that Petitioner's household would have been ineligible for FAP benefits for the time period between March 2020 and January 2021 due to excess income.

Upon review, because Petitioner made a reasonable effort to provide the Department with the requested verification of her husband's income from [REDACTED] and did not indicate a refusal to provide the verifications, the Department was not required to close Petitioner's FAP case due to a failure to verify. Therefore, because the Department did not establish that Petitioner's FAP case should have closed due to a failure to verify, and because the Department did not present any evidence that Petitioner was otherwise ineligible to receive FAP benefits from March 2020 through January 2021, the Department failed to show that Petitioner received an overissuance of FAP benefits in the amount of \$6,644.

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 determined that Petitioner received an agency error OI of \$6,644 in FAP benefits for the period between March 1, 2020, and January 31, 2021. As such, the Department is not entitled to recoupment.


DECISION AND ORDER

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. Delete the \$6,644 agency error FAP OI from March 1, 2020, to January 31, 2021, and cease any recoupment and/or collection action.

ZB/ml



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:

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