



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



Date Mailed: February 29, 2024  
MOAHR Docket No.: 24-000608  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner**

### **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 hearing was held by telephone on February 22, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Rhonda Holland, Overpayment Establishment Analyst.

### **ISSUE**

Did Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits due to agency error 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. At all times relevant to this case, Petitioner was an ongoing recipient of FAP benefits. (Exhibit A, pp. 55 – 56, 86 – 93).
2. Petitioner's group included herself, her spouse [REDACTED] (Spouse), and their two (2) minor children. (Exhibit A, p. 87).
3. On December 4, 2017, the Department sent a redetermination application to Petitioner, which she completed and returned to the Department on January 9, 2018. (Exhibit A, pp. 86 – 93).

4. On the redetermination application, Petitioner reported starting employment with [REDACTED] (Employer) on September 8, 2017 and ending employment with Thomas Restaurant on September 1, 2017. No other income from employment for the household was reported. (Exhibit A, p. 90).
5. On August 15, 2018, a Wage Match Client Notice was generated and mailed to Petitioner, requesting that she return the completed form or her last 30 days of paystubs to the Department by September 14, 2018. The Petitioner completed the form and provided paystubs to the Department on September 18, 2018. (Exhibit A, pp. 75 – 85).
6. On November 1, 2018, the Department began including Petitioner's earnings from Employer in the calculation of Petitioner's FAP budget for the first time. (Exhibit A, p. 3).
7. On March 11, 2019, the Department made an OI referral based on the reported but unbudgeted earnings of Petitioner for the period of April 1, 2018 through November 1, 2018. (Exhibit A, p. 94).
8. From April 1, 2018 through October 31, 2018, the alleged OI period, Petitioner received a total of \$4,482 in ongoing and supplemental FAP benefits. (Exhibit A, p. 30, see also pp. 55 – 56).
9. On January 5, 2024, the Department reviewed Petitioner's earnings during the period of April 1, 2018 through October 31, 2018 and recalculated the FAP benefit amount Petitioner should have received for each month in the period. The Department determined that Petitioner received \$3,182 in ongoing and supplemental FAP benefits that Petitioner should not have received based on her earnings. (Exhibit A, pp. 3, 31 – 54).
10. On January 5, 2024, the Department sent a Notice of Overissuance to Petitioner indicating Petitioner was overissued FAP benefits during the period of April 1, 2018 through October 31, 2018 in the amount of \$3,182. (Exhibit A, pp. 31 – 54).
11. On January 12, 2024, the Department re-reviewed Petitioner's earnings, utilizing Petitioner's paystubs and earnings disclosed on a Work Number report and recalculated the FAP benefit amount Petitioner should have received for each month in the period. The Department determined that Petitioner received \$2,975.00 in ongoing and supplemental FAP benefits that Petitioner should not have received based on her actual earnings. (Exhibit A, pp. 3, 14 – 29).
12. On January 29, 2024, the Department sent a corrected Notice of Overissuance to Petitioner indicating Petitioner was overissued FAP benefits during the period of April 1, 2018 through October 31, 2018 in the amount of \$2,975. (Exhibit A, pp. 8 - 13).

13. On January 12, 2024, Petitioner submitted a request for hearing to the Department disputing the Department's FAP OI determination. (Exhibit A, p. 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.

Petitioner requested a hearing in this matter to dispute the finding by the Department that Petitioner was overissued FAP benefits. Petitioner's request for hearing states two reasons for her request: a) Petitioner provided proof of her income from Employer in 2018 and b) the Department is seeking recovery of the OI from her but she was not the only adult in the FAP group at the time of the alleged OI. (Exhibit A, p. 6). The Department is seeking to recover an OI for the period of April 1, 2018 through October 31, 2018 in the amount of \$2,975. (Exhibit A, pp. 8 – 13).

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700 (October 2018), p. 1; 7 CFR 273.18(a)(2). The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 705 (January 2016 and October 2018), p. 6; 7 CFR 273.18(c)(1). An OI can be caused by client error, agency error, or an intentional program violation (IPV). BAM 700, pp. 5 – 9. An agency error is caused by incorrect actions by the Department, including not using available information. BAM 700, pp. 5 – 6; 705 (October 2018), p. 1; 7 CFR 273.18(b)(3).

When an OI, due to agency error, in excess of \$250.00 is discovered, the Department is required to establish a claim for repayment for the OI. BAM 700, p. 5; BAM 705, p. 7; 7 CFR 273.18(d)(3). Additionally, each adult member of a household is responsible for payment of claims. 7 CFR 273.18(a)(4). Federal regulations do not allow the Department latitude to exercise discretion in establishing and pursuing a claim for OI. 7 CFR 273.18(a)(2). The Department must go back to at least twelve months before it became aware of the overpayment; however, it cannot include amounts that occurred more than six years before it became aware of the overpayment. 7 CFR 273.18(c)(i); BAM 705, pp. 5 – 6. Because the referral to the recoupment specialist was made in the case on March 11, 2019 (Exhibit A, p. 94), the Department could properly pursue an OI

against Petitioner for the period April 1, 2018 through October 31, 2018, which is within twelve months of the referral date.

In this case, the Department acknowledged that it erred in failing to review all available resources as required by policy (BEM 500 (July 2017), p. 1; BEM 501 (July 2017), pp. 6 – 7) when it failed to consider and account for Petitioner's employment income in determining Petitioner's FAP benefit rate. The Department determined Petitioner's FAP group eligibility, and issued benefits, without consideration of Petitioner's reported employment income as required by policy and, as a result, Petitioner was overissued \$2,975 in FAP benefits from April 1, 2018 to October 31, 2018 due to agency error. BEM 505 (October 2017), pp. 1, 6 – 10.

In support of its calculations of an OI, the Department presented OI budgets for each month of the OI period. The Department testified that it calculated the OI total for these periods by calculating what Petitioner's FAP budget would have been for each month during the OI period, had her earned income from Employer been included in the household budget. (BEM 505 (October 2023), pp. 13 – 14; Exhibit A, pp. 16 – 29). To calculate Petitioner's income for purposes of determining the OI, the Department utilized paystubs provided by Petitioner in September 2019 as well as obtaining Petitioner's employment income information from the Work Number database. (Exhibit A, pp. 61 - 83). The Work Number is a tool provided by Equifax Verification Services that the Department uses to verify clients' employment information through wage matches. The Department testified that the only changes in Petitioner's FAP budgets when calculating the OI budget versus the original budget were including this income information and the corresponding adjustment to the excess shelter deduction calculation.

A review of the OI budgets shows that the Department correctly calculated Petitioner's earned income based on her actual pay and net income for each month at issue. (Exhibit A, pp. 16 – 29). Because the group's income was greater than the Department considered when determining Petitioner's FAP group's benefit amount for April 1, 2018 through October 31, 2018, Petitioner's FAP group was not eligible for FAP benefits in the amount it received and received an OI of FAP benefits.

Petitioner's FAP group received \$4,482 in FAP benefits from April 1, 2018 through October 31, 2018. (Exhibit A, pp. 30, 55 – 56). The Department's FAP OI budgets correctly reflect that Petitioner's FAP group should have only received \$1,507 in FAP benefits for that period. (Exhibit A, p. 30; see also RFT 260 (October 2017)). Therefore, the OI of FAP benefits is \$2,975.


At the hearing, Petitioner expressed concerns that only she would be responsible for the FAP OI even though during the OI period her ex-husband was a FAP group member. Federal law and Department policy both require that all adult members of a FAP group that received an OI of FAP benefits are responsible for the FAP OI. 7 CFR 273.18(a)(4). The Department presented documentation from its system showing that it was seeking repayment of the FAP OI from Petitioner's ex-husband as well as from Petitioner. (Exhibit B).

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 acted in accordance with Department policy when it determined an OI of FAP benefits to Petitioner's FAP group exists, due to agency error, and the Department is entitled to recoup.

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

CML/ml

  
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**Caralyce M. Lassner**  
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:**

**DHHS**

Jeanenne Broadnax  
Wayne-Taylor-DHHS  
25637 Ecorse Rd.  
Taylor, MI 48180

**MDHHS-Wayne-18-Hearings@michigan.gov**

**DHHS Department Rep.**

Overpayment Establishment Section (OES)  
235 S Grand Ave, Ste 811  
Lansing, MI 48909

**MDHHS-RECOUPMENT-HEARINGS@Michigan.gov**

**Interested Parties**

BSC4

M Holden

B Cabanaw

N Denson-Sogbaka

**Via First Class Mail:**

**Petitioner**

[REDACTED]  
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[REDACTED], MI [REDACTED]