



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: April 10, 2024
MOAHR Docket No.: 24-002209
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Julia Norton

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, telephone hearing was held on April 3, 2024. Petitioner was present and represented by authorized hearing representative (AHR) [REDACTED]. The Department of Health and Human Services (Department) was represented by Dawn McKay, Recoupment Specialist.

ISSUE

Did the Department properly determine that Petitioner had received an Agency Error (AE) overissuance (OI) of Food Assistance Program (FAP) benefits?

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 applied for FAP benefits on August 23, 2022, for himself, his spouse, and granddaughter. Petitioner reported Retirement, Survivors, and Disability Insurance (RSDI) income for his spouse and granddaughter.
2. FAP benefits were approved for Petitioner's group size of three.
3. Petitioner is [REDACTED] years old, Petitioner's spouse is [REDACTED] years old, and their granddaughter is [REDACTED] years old.
4. On or about May 22, 2023, Petitioner received a lump sum retroactive RSDI payment of [REDACTED] which covered the period of November 2022 to April 2023. Petitioner began receiving monthly RSDI payments of [REDACTED] starting on or about the second Wednesday of June 2023. Exhibit B, p.1.

5. On June 24, 2023, Petitioner submitted a FAP renewal. Petitioner reported RSDI income for his spouse, granddaughter, and himself. Exhibit A, pp. 56-60.
6. On February 13, 2024, the Department issued a Notice of Overissuance to Petitioner notifying him of a FAP overissuance for the period of January 1, 2023 to July 31, 2023 (OI period) in the amount of \$5,060.00 due to the Department's error of failing to budget Petitioner's unreported RSDI income. Exhibit A, pp. 7-8.
7. On February 22, 2024, the Department received Petitioner's hearing request disputing the Department's decision that he had received an OI of FAP benefits.

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, the Department determined Petitioner received an OI of FAP benefits in the amount of \$5,060.00 due to an AE based upon the Department's failure to budget Petitioner's receipt of monthly RSDI payments from January 2023 to July 2023. 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. AE OIs are caused by incorrect actions, including delays or no action, by the Department. BAM 705 (October 2018), p. 1; 7 CFR 273.18(b).

The Department testified that RSDI income information for Petitioner was accessed through the Single On-Line Query (SOLQ), the Social Security Administration (SSA) database that the Department can access for information concerning clients' SSA benefits. Petitioner's SOLQ showed that Petitioner was credited ██████████ for November 1, 2022; ██████████ for December 1, 2022; and ██████████ for December 1, 2023. Exhibit A, p. 46.

To establish the OI amounts, the Department presented OI budgets for each of the months in the OI period showing that Petitioner's household would not be eligible for any FAP if his RSDI income had been included in the calculation of the household's FAP eligibility. The Department added to the FAP OI budget the following amounts as Petitioner's monthly RSDI income: ██████████ for January 2023 and ██████████ for

February 2023 through July 2023. The Department testified the only item changed in each month's budget was the addition of the income attributed to Petitioner and any figures that would change because of consideration of that income. The budgets established that, when Petitioner's monthly RSDI was added to the household's income, the group was not eligible for any FAP benefits issued to the group between January 2023 and July 2023 totaling \$5,060.00.

The AHR testified that Petitioner did not receive any monthly RSDI payments during the months of January 2023 to May 2023. Rather, Petitioner received a single lump sum retroactive RSDI payment for [REDACTED] in May 2023. The lump sum payment represented retroactive pay for the months of November 2022 through April 2023. The AHR testified that Petitioner received his first monthly RSDI payment in June 2023. The AHR presented a letter from SSA consistent with his testimony. Exhibit B.

Accumulated benefits are a one-time payment of non-Department benefits issued to cover a retroactive period of time or to cover a future period of time. Bridges Policy Glossary (BPG) (February 2024), p. 1. RSDI is listed as an example of accumulated benefits. BPG, p. 1. Policy provides that for FAP purposes, retroactive RSDI paid out as an accumulated benefit is treated as an asset starting the month received. BEM 500 (April 2022), p. 7. If a single lump sum payment includes both accumulated benefits and benefits for the payment month, the portion intended for the payment month is counted as income. BEM 500, p. 7. Because Petitioner received accumulated RSDI in May 2023 totaling [REDACTED] for the period covering November 2022 through April 2023, the Department improperly budgeted the retroactive RSDI payment as monthly income for Petitioner.

Petitioner received his first monthly RSDI payment for [REDACTED] on or about the second Wednesday in June 2023. Exhibit B, p. 1. Petitioner reported receipt of this payment on June 24, 2023. Therefore, Petitioner timely reported his income. Per policy, the Department is required to process changes within 10 days of receipt of the reported change. BAM 220 (November 2023), p. 7. Furthermore, negative actions should affect the FAP case within 12 days of processing the change. BAM 220, p. 13. Based on these policies, the earliest the Department could have affected a benefit reduction to Petitioner's FAP benefits or FAP case closure was for August 2023.

During the hearing, the Department acknowledged errors in determining the OI because it improperly considered the retroactive RSDI payment and proceeded to attribute that lump sum payment to Petitioner as monthly income for the period of January 2023 to July 2023.

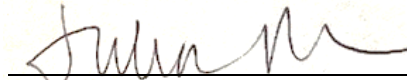
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it calculated an overissuance based on the erroneous inclusion of Petitioner's retroactive RSDI payment in the household's income for the period of January 2023 to July 2023.

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 from Petitioner's case the FAP OI of [REDACTED] for the period of January 2023 through July 2023.



Julia Norton
Administrative Law Judge

JN/pt

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

Dawn Tromontine
Macomb County DHHS Sterling Heights Dist.
41227 Mound Rd.
Sterling Heights, MI 48314

MDHHS-Macomb-36-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
N Denson-Sogbaka
B. Cabanaw
MOAHR

Via-First Class Mail:

Petitioner

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