



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

WAYNE WANG
1155 SOUTH LAKE DR
NOVI, MI 48377

Date Mailed: April 11, 2024
MOAHR Docket No.: 24-002210
Agency No.: 112912924
Petitioner: Wayne Wang

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 April 3, 2024. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Annette Fullerton, Overpayment Establishment Analyst.

ISSUE

Did the Department properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits in the amount of \$2,845, for the period of December 1, 2020 through October 31, 2021, due to client error?

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 for a group of one.
2. As of September 4, 2020, Petitioner was over the age of 60. (Exhibit A, pp. 10, 13).
3. On September 4, 2020, the Department sent Petitioner a redetermination application for his FAP benefits. (Exhibit A, pp. 50 – 54).

4. On September 18, 2020, Petitioner returned his completed redetermination application to the Department, on which Petitioner reported \$0 income. (Exhibit A, pp. 50 – 54).
5. On October 6, 2020, the Department completed an interview with Petitioner.
6. On October 6, 2020, the Department issued a Notice of Case Action (NOCA) to Petitioner, approving him for FAP benefits in the amount of \$204 per month, for the period of November 1, 2020 through October 31, 2022. The NOCA reflected Petitioner's monthly income of \$0. The Department included a Change Report form with the NOCA, which required Petitioner to report any changes in income, among other things, to the Department within ten days. (Exhibit A, pp. 58 – 65).
7. On October 16, 2020, the Department obtained a State Online Query (SOLQ) report regarding Petitioner. The SOLQ reported Petitioner to be in a positive Retirement, Survivors, and Disability Insurance (RSDI) status but reported no RSDI or Supplemental Security Income (SSI) payments being made to Petitioner by the Social Security Administration (SSA). (Exhibit A, pp. 10 – 12).
8. On November 6, 2020, the Department obtained another SOLQ report regarding Petitioner. This SOLQ also reported Petitioner to be in a positive RSDI status but reported no RSDI or SSI payment being made to Petitioner. (Exhibit A, pp. 13 – 15).
9. On September 1, 2021, the Department sent Petitioner a Mid-Certification Contact Notice for his FAP benefits. (Exhibit A, pp. 55 – 57).
10. On September 20, 2021, Petitioner returned his completed redetermination application to the Department, on which Petitioner reported no changes of more than \$100 in his unearned income, specifically including "Social Security (RSDI/SSI), Pension, Child Support". (Exhibit A, pp. 50 – 54).
11. On October 7, 2021, the Department obtained an SOLQ report regarding Petitioner. This SOLQ reported monthly RSDI benefits to Petitioner of \$2,218.60 on October 1, 2020, \$2,219 on November 1, 2020, and \$2,248 on December 1, 2020 ongoing. (Exhibit A, pp. 16 – 18).
12. On October 7, 2021, the Department issued an NOCA to Petitioner, closing his FAP case, effective November 1, 2021 ongoing, because Petitioner's net income exceeded the program limits. The NOCA reflected Petitioner's unearned monthly income of \$2,248. (Exhibit A, pp. 66 – 67).
13. On October 7, 2021, the Department submitted an OI referral to the recoupment specialists based on Petitioner's unreported unearned income. (Exhibit A, p. 9).
14. On February 14, 2024, the Department sent Petitioner a Notice of Overissuance alleging a FAP OI for the period of December 1, 2020 to October 31, 2021, in the

amount of \$2,845, based on Petitioner's unreported RSDI income. The notice included an OI summary, repayment agreement, and notice of Petitioner's hearing rights. (Exhibit A, pp. 44 – 49).

15. On February 20, 2024, the Department received Petitioner's request for hearing in dispute of the Department's determination of an OI. (Exhibit A, pp. 3 – 4).

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 a finding by the Department that Petitioner was overissued FAP benefits in the amount of \$2,845 between December 1, 2020 and October 31, 2021 based on Petitioner's failure to report unearned RSDI income to the Department.

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 715 (October 2017), 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. A client error occurs when the OI was due to the client giving incorrect or incomplete information to Department, while an agency error is caused by incorrect actions by the Department, including not using available information. BAM 700, pp. 5 – 7; BAM 705 (October 2018), p. 1; 7 CFR 273.18(b)(3). In either event, when an OI in excess of \$250.00 is discovered, the Department is required to establish a claim for repayment for the OI. BAM 715, p. 7; 7 CFR 273.18(d)(3).

The Department presented a November 2021 SOLQ that showed that Petitioner started receiving RSDI in October 2020 even though this income was not reported on the SOLQ reports the Department ran in Petitioner's case on October 16, 2020 or on November 6, 2020. (Exhibit A, pp. 10 – 18). The Department also verified this income with SSA on February 13, 2024. (Exhibit A, p. 1). The Department contended that Petitioner was approved for monthly RSDI as of October 2020 and started receiving

payment on a monthly basis beginning the same month. Petitioner agreed that he started receiving monthly RSDI in October 2020 and did not allege that he had received a lump sum payment representing accumulated RSDI benefits for more than one month. Petitioner did not report this RSDI income at any time, including in the October 2020 interview held in connection with his September 2020 redetermination application, or in his September 2021 mid-year certification report. Therefore, to the extent Petitioner received an OI of FAP benefits due to unreported income, the error was a client error. Because the evidence presented showed that Petitioner began receiving his RSDI payment in October 2020, the first month of the OI period was properly determined to be December 2020. BAM 105 (July 2020), pp. 11 – 12; BAM 220 (July 2020), pp. 6 – 9; BEM 505 (October 2017), pp. 9 – 12.

As Petitioner was over 60 years of age as of September 4, 2020, he was considered a Senior/Disabled/Veteran (SDV) group for FAP purposes. BEM 550 (October 2020), pp. 1 – 2. For FAP purposes, “[h]ouseholds which contain an SDV member and whose gross income is above 200% [of the Federal Poverty Level (FPL)] are **not** categorically eligible but they may still be eligible for benefits if their net income is below 100 percent of the poverty level and they meet the asset limit; see BEM 400 and BEM 550.” BEM 213 (January 2020), p. 2 (emphasis in original); and RFT 250. In October 2020, the FPL for a household of one was \$1,064, and 200% of that was \$2,128, and in 2021 the FPL for a household of one was \$1,074, and 200% of that was \$2,148. RFT 250 (October 2020, October 2021). Therefore, with \$2,248 in monthly RSDI income in December 2020 and ongoing, Petitioner’s gross income was more than 200% of the FPL. (Exhibit A, pp. 16 – 18).

Because Petitioner was a FAP group with an SDV member and Petitioner’s gross RSDI income was more than 200% of the FPL, Petitioner was not categorically eligible for FAP and was therefore only eligible for FAP if his net income (Petitioner’s RSDI income reduced by applicable deductions) fell below the net income limit for a single-person FAP group under RFT 250. The net income limit from December 1, 2020 through September 30, 2021 was \$1,064. RFT 250 (October 2020). The limit increased in October 2021 to \$1,074. RFT 250 (October 2021). The FAP OI budgets for each month from December 2020 to October 2021 provided by the Department established that, when Petitioner’s RSDI income was included in the calculation of his FAP eligibility, Petitioner’s net income exceeded the net income limit for each month of the alleged OI period. (Exhibit A, pp. 20 – 41). Therefore, Petitioner was not eligible for any FAP benefits from December 2020 through October 2021.

Petitioner did not dispute that he received the FAP benefits in the amounts asserted by the Department; specifically, for the period of December 1, 2020 through October 31, 2021, Petitioner received benefits totaling \$2,845. (Exhibit A, p. 19). The Department has alleged that it is entitled to recover this full \$2,845. However, for FAP benefits issued from January 1, 2021 to September 30, 2021, FAP recipients became eligible for a 15% benefit increase pursuant to the 2021 Consolidated Appropriations Act, P.L. 116-260 (Appropriations Act), as extended by the American Rescue Plan, P.L. 117-2, and under Section 702(b)(4) of the Appropriations Act the 15% benefit increase is **not**

subject to recoupment under any circumstances. When requesting recoupment of FAP benefits from January 1, 2021 to September 30, 2021, the Department is required to explain how it calculated the OI amount, less the 15% benefit increase. See United States Department of Agriculture, Supplemental Nutrition Assistance Program (SNAP), Consolidated Appropriations Act, 2021 – Questions and Answers (February 19, 2021)¹.

Here, the Department did not offer a Benefit Summary Inquiry reflecting separation of the 15% benefit increase from the ongoing FAP benefit amount during the alleged OI period. The Department did not present any other evidence or testimony demonstrating that it adjusted the requested OI to exclude the 15% benefit increase from the OI amount. Because the Department has not demonstrated that it excluded the 15% benefit increase, it has not satisfied its burden of showing that it properly calculated the OI amount for the alleged OI period. Therefore, it is not entitled to repayment from Respondent of \$2,845 in overissued FAP benefits.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that the Department did not act in accordance with Department policy when it calculated the \$2,845 in overissued FAP benefits.

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. Recalculate the FAP OI for December 2020 to October 2021; and
2. Notify Petitioner in writing of its decision.

CML/nr



Caralyce M. Lassner
Administrative Law Judge

¹ <https://www.fns.usda.gov/snap/provisions-consolidated-appropriations-act-2021>. (Last accessed April 9, 2024).

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

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Interested Parties

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