



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON BROWN DPA
DIRECTOR

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Date Mailed: May 1, 2024
MOAHR Docket No.: 24-003365
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 April 29, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Rebecca Webber, overpayment establishment analyst.

ISSUE

Did Petitioner submit a timely hearing request?

Did the Department properly determine that Petitioner 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. On March 22, 2014, the Department received a FAP application from Petitioner's daughter ██████████ (Daughter) which listed ██████████ as homeless, the only household member, that she was pregnant, and had a job at ██████████ earning \$██████ per hour for 25 hours of work per week paid biweekly.
2. Daughter received FAP benefits from March 24, 2014 through December 31, 2014.
3. At some point shortly after application, the Department determined, and no evidence was presented that Daughter disputed, that Daughter was living with her mother, Petitioner in this case, and because Daughter was under age ████████, Petitioner needed to be listed on Daughter's case.

4. From March 2014 through December 2014, the Department issued FAP benefits to Daughter for a group size of three which included Daughter, Daughter's child, and Petitioner but failed to consider either of their incomes.
5. Petitioner was unaware that she was included in the FAP group.
6. On December 2, 2014, an Overissuance Referral was created indicating that Petitioner had unreported earnings for the household from April 2014 through December 2014.
7. On May 12, 2017, the Department issued a Notice of Overissuance to Daughter, not to Petitioner, informing her that the Department had determined she received an AE OI for the period of March 2014 through December 2014 in the amount of \$4,482.00 because the Department had not budgeted Petitioner's income from March 2014 through December 2014 and because Petitioner was a mandatory group member due to Daughter's age and their living arrangements.
8. On March 17, 2018, the Department issued a Treasury Offset Program Notice directly to Petitioner informing her that she was

liable for overissued Food Assistance benefits. MDHHS has previously mailed or otherwise delivered demand letters notifying you about the claim, including the right to a fair hearing on the claim, and has made any other required collection efforts.

If you do not pay your debt or take other action described below before 60 days from the date of this notice, MDHHS will submit your debt to the Treasury Offset Program, and may refer your debt to private collection contractors, the Department of Justice, or seek voluntary repayment.

You may request a review of our intended action, and our determination that you owe this debt. Such request must be in writing, must include evidence in support of your position, and must include your social security number. Upon receipt of the properly documented request for review from you, we will inform you of our decision about your debt, and provide you with an opportunity to inspect and copy our records related to your debt.

9. In 2019, Petitioner's income tax refund was seized by the Treasury Offset Program.
10. On May 7, 2019, Petitioner submitted a letter to the Overpayment Dispute Resolution Unit disputing the debt and the Treasury Offset in the amount of \$521.00.

11. On May 14, 2019, the Department issued a letter addressed to Petitioner indicating that notice had been issued to the household in May 2017 with a Treasury Offset Notice issued in March 2018 and that the claim was past due and legally enforceable. She was also advised of the opportunity to have the Department's decision reviewed by the Food and Nutrition Service (FNS).
12. In 2024, Petitioner's tax refund was again seized by the Treasury Offset Program.
13. On March 22, 2024, the Department received Petitioner's request for hearing disputing the determination that she was responsible for the OI and seeking to have her tax refunds returned to her.
14. After filing the hearing request, Petitioner was given her own Department case number.

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 notified Daughter on May 12, 2017 of an AE OI totaling \$4,482.00 based on the Department's failure to consider Petitioner's and Daughter's income from May 2014 through December 2014. In 2019 and again in 2024, the Department implemented a Treasury Offset and seized Petitioner's tax refunds. On March 22, 2024, Petitioner submitted a hearing request disputing her responsibility to repay the OI and the Department disputes the timeliness of Petitioner's hearing request.

Timeliness of Hearing Request

At the time the Notice of Overissuance was mailed to Daughter in May of 2017 and still to this day, all clients have the right to request a hearing including any adult member of the eligible group within 90 days of the date of the notice. BAM 600 (April 2017), pp. 2, 6. Because Petitioner was part of the group, she was allowed to file a hearing request as soon as the Notice of Overissuance was issued. However, no evidence was presented that Petitioner was directly informed of the OI, her responsibility for the OI, or her ability to dispute the OI because although the notice was sent to Daughter, the notice was not sent to Petitioner and by 2017, more than two years after the OI period ended, there was no evidence that Petitioner was still part of the group or that Daughter lived with Petitioner.

Although the Department did issue a Treasury Offset Program Notice to Petitioner in 2018, the notice did not explain the actions taken by the Department, the reason for the action, the manual item or law relied upon for the action, or an explanation of the right to a hearing as required by policy under BAM 220 (April 2017), p. 2. Therefore, the Treasury Offset Program Notice is insufficient to put Petitioner on notice of the debt or her right to a hearing. Even in 2019 when Petitioner's tax refund was seized by the Department, no evidence was presented that Petitioner was informed of her right to request a hearing and dispute the actions. Therefore, because the Department never issued notice to Petitioner informing her of the actions, reasons, legal basis, or right to request a hearing, and because there is no evidence that Petitioner and Daughter were still part of the same group in 2017 or living together when the notice was issued, Petitioner's hearing request is considered timely, and the underlying issue of an OI is addressed below.

Agency Error Overissuance

Client error (CE) OIs exist when a client gives incorrect or incomplete information to the Department. BAM 715 (January 2016), p. 1; 7 CFR 273.18(b). Agency error (AE) OIs are caused by incorrect actions, including delays or no action, by the Department. BAM 705 (January 2016), p. 1; 7 CFR 273.18(b). The Department must attempt to recoup all FAP OIs greater than \$250.00. BAM 700 (October 2016), pp. 1, 5, 9. Policy further provides that if upon a timely hearing request, an administrative hearing decision upholds the Department's actions, the client must repay the OI. BAM 700, pp. 3-4. A client is defined as a person who applied for, currently receives, inquires about, or is part of a base group that receives program benefits. BPG Glossary (October 2015), p. 13. In agency error OI cases, the Department can only establish an OI for the period beginning the first month when the benefit issuance exceeds the amount allowed by policy, or the 12 months before the date the OI was referred to the Recoupment Specialist, whichever 12-month period is later. BAM 705, p. 5. Pursuant to Federal Regulations, the state must establish and collect any recipient claim amount owed because of overpayment of benefits and establish a plan for establishing, collecting, and processing of the claims. 7 CFR 273.18(a)(1-3). Furthermore, both policy and Federal regulations provide that each adult member of a household is responsible for payment of claims. BAM 725 (January 2017), p. 1; 7 CFR 273.18(a)(4).

In reviewing this case, upon initial application, Daughter, age ■ at application, did not include Petitioner on the application or in the household, but shortly thereafter, the Department became aware that Daughter was living with Petitioner, her mother, and included Petitioner in the FAP group composition but failed to consider her income. Pursuant to policy and Federal Regulation, parents and their children under ■ years of age who live together must be in the same FAP group regardless of whether the child has their own spouse or child who lives with the group. BEM 212 (January 2017), p. 1; 7 CFR 273.1(b)(ii). Therefore, although Petitioner did not submit the application and had no intention of receiving FAP benefits, Petitioner was properly placed in the FAP group of Daughter. Furthermore, because she was in the FAP group of Daughter and she was an adult within the group, both Daughter and Petitioner are responsible for any potential overissuance of FAP benefits whether caused by someone in the FAP group or caused by the Department.

Turning to the issue of whether an OI exists, the Department erred in failing to consider all household income from Petitioner and Daughter in determining the group's FAP eligibility. Pursuant to policy, the Department must review all available resources in determining the group's FAP eligibility or benefit rate. BEM 500 (January 2014); BEM 501 (July 2014), p. 6. Because no income was originally considered and either Petitioner or both Petitioner and Daughter had income during the OI period, an AE OI occurred. As a result, the Department determined Petitioner's FAP group eligibility and issued benefits without consideration of all available group income. The Department properly determined that an AE OI exists.

In support of its calculations of an OI, the Department presented OI budgets for each month of the OI period. In reviewing the OI budgets, the Department failed to provide the earned income deduction for Petitioner's income nor was it provided for Daughter's second job (it is unclear whether Daughter failed to report it or if the Department simply failed to budget it). In 2014 and today, policy provides that the earned income deduction is not provided when the error is a client error due at least in part to report the client's failure to report earned income. BAM 715 (July 2013, October 2017), p. 8; BEM 556 (March 2024), pp. 7-8. In this case, the Department concedes that there was an agency error, not a client error. Although Petitioner's income was unreported, there is no evidence to suggest that the Department ever sought verification from Petitioner or Daughter to verify Petitioner's income as required by policy even though the Department included Petitioner in the group as of the first benefit issuance in March 2014. BAM 130 (January 2014), p. 1; BEM 500, p. 12; BEM 501, p. 9. Therefore, none of the budgets from March 2014 through December 2014 were calculated in accordance with Department policy because the earned income deduction was not provided and the Department has not shown that Petitioner is responsible for a total OI of \$4,482.00.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated an AE OI of \$4,482.00 for the period March 2014 through December 2014.

DECISION AND ORDER

Petitioner's hearing request is considered timely.

The Department's decision with respect to the AE OI of \$4,482.00 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 AE OI for March 2014 through December 2014;

2. Issue notice to Petitioner and Daughter via separate letters with rights to a hearing regarding the Department's recalculated OI for the period March 2014 through December 2014; and,
3. If the recalculated OI is less than the amount received by the Department from previous recoupments and/or collections from Petitioner and Daughter, issue reimbursement for the amount which exceeds the recalculated OI.



Amanda M. T. Marler
Administrative Law Judge

AMTM/cc

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-STCLAIR-HEARINGS
MDHHS-Recoupment-Hearings
BSC2-HearingDecisions
N. Denson-Sogbaka
B. Cabanaw
M. Holden
MOAHR

Via-First Class Mail :

Petitioner

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