



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]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: September 13, 2024
MOAHR Docket No.: 24-005431
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on August 27, 2024, via teleconference. Petitioner appeared and was represented by Authorized Hearing Representative (AHR), [REDACTED] Kathleen Zewatsky, Overpayment Establishment Analyst, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department). MDHHS' Hearing Packet was admitted at the hearing as MDHHS Exhibit A, pp. 1-104.

The record was held open for seven days to allow Petitioner to submit additional documentation regarding employment records. The parties waived any violation of timeliness standards. All additional evidence was due to the Michigan Office of Administrative Hearings and Rules (MOAHR) by September 4, 2024. MOAHR did not receive any additional proposed exhibits from Petitioner. Accordingly, this decision is based on the testimony and evidence provided at the hearing.

ISSUES

1. Did MDHHS properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits based on client error?
2. Did MDHHS properly determine that Petitioner received an OI of FAP benefits based on agency 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. Petitioner was an ongoing recipient of FAP benefits.

2. On November 9, 2021, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits beginning October 25, 2021 (Exhibit A, p. 48). The FAP benefit rate was based on earned income (Exhibit A, p. 30). The notice included language stating that Petitioner's household was in the Simplified Reporting (SR) category and that the household was only required to report changes if the group's gross monthly income exceeded the income limit of \$4,839.00 (Exhibit A, p. 48).
3. On April 2, 2024, MDHHS sent Petitioner a Notice of Overissuance, indicating that she received more FAP benefits than she was eligible to receive from January 1, 2022 to March 31, 2022 (Exhibit A, p. 9). The Notice indicated that the OI was due to client error because Petitioner did not report exceeding the Simplified Reporting (SR) limit (Exhibit A, p. 9). The notice stated that the amount of the OI was \$4,512.00 (Exhibit A, p. 9).
4. On April 2, 2024, MDHHS sent Petitioner a Notice of Overissuance, indicating that she received more FAP benefits than she was eligible to receive from April 1, 2022 to September 30, 2022 (Exhibit A, p. 924). The Notice indicated that the OI was due to agency error because MDHHS failed to act on a new hire notice (Exhibit A, p. 24). The notice stated that the amount of the OI was \$9,024.00 (Exhibit A, p. 9).
5. On May 8, 2024, Petitioner filed a Request for Hearing disputing MDHHS' determinations regarding the FAP OI (Exhibit A, pp. 4-5).

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. MDHHS 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, MDHHS determined that Petitioner received an OI of FAP benefits based on client error, because she failed to report exceeding the Simplified Reporting (SR) limit. Additionally, MDHHS determined that Petitioner received an OI of FAP benefits based on agency error because MDHHS failed to properly act on a new hire notice.

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. The amount of a FAP OI is the benefit amount the client actually received minus the

amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 715 (October 2017), p. 6. An OI can be caused by client error, agency error, or an intentional program violation (IPV). BEM 700, pp. 5-9. An agency error is caused by incorrect action by MDHHS staff or department processes. BEM 700, p. 5. Agency errors are not pursued if less than \$250.00 per program. *Id.* Conversely, a client error occurs when the OI was due to the client giving incorrect or incomplete information to MDHHS. BEM 700, p. 7.

Respondent's FAP group was in the SR category. Food assistance groups with countable earnings are assigned to the SR category. BAM 200 (January 2021), p. 1. SR groups are required to report only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. *Id.* No other change reporting is required. *Id.* If the group has an increase in income, the group must determine their total gross income at the end of that month. *Id.* If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. *Id.* Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. *Id.*

MDHHS presented evidence that Petitioner's household exceeded the SR limit in December 2021, which meant that Petitioner was required to report exceeding the SR by January 10, 2022. In January 2022, MDHHS determined that the household received [REDACTED] in gross income, which exceeded the gross income limit of \$5,930.00 (Exhibit A, p. 18). Similarly, the household was over the gross income limit in February and March 2022 (Exhibit A, pp. 18-23).

MDHHS based the income calculation on income received by household members as reported on Equifax Work Number Reports (Exhibit A, pp. 65-79). At the hearing, Petitioner disputed the amounts of income on the reports. Petitioner was given additional time to submit documentation to show that the reports were inaccurate; however, she failed to do so. Therefore, Petitioner has not provided sufficient evidence to show that MDHHS' income calculation was inaccurate.

From January 2022 to March 2022, Petitioner's household received \$[REDACTED] in ongoing and supplemental FAP benefits (Exhibit A, p. 16). Due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size would receive a supplement to bring their benefit amount to the maximum for their group size. ESA Memo 2020-15 (March 2020; updated December 2020). The State of Michigan issued EA from April 2020 to February 2023. ESA Memo 2023-10 (February 2023). In addition, beginning in May 2021, MDHHS began issuing a minimum \$95 supplement to all FAP households, including households that were already receiving the maximum allotment for their household size. ESA Memo 2021-22 (May 2021). Wrongfully issued EA are recoupable by MDHHS if the FAP household is not eligible for any FAP benefits during the month at issue.

MDHHS presented OI budgets to show that the household income exceeded the income limit for the program during the time period in question. Because the household was not eligible for any benefits during those months, MDHHS is entitled to recoup \$4,512.00 in FAP benefits from the household.

Petitioner testified at the hearing that she did not know that she was supposed to report the income to MDHHS. Although Petitioner did not act intentionally to obtain more benefits than she was eligible to receive, MDHHS is also required to pursue OIs based on client error. Petitioner's failure to report exceeding the SR limit constitutes a client error.

Regarding the AE, MDHHS testified that it sent Petitioner a new hire notice for employment Petitioner started at [REDACTED] on [REDACTED] 2022 (Exhibit A, p. 86). The due date for Petitioner to return the new hire notice was February 2, 2022 (Exhibit A, p. 86). MDHHS testified that it did not receive the returned notice from Petitioner and because it was not returned, it should have taken steps to close Petitioner's case. It did not, which constituted an agency error. MDHHS is required to verify employment information required by policy and when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130 (January 2022), p. 1. If the client fails to provide the verification requested, MDHHS is required to send a negative action notice informing the client that the case may be closed for failure to provide the requested verification. Given this policy, the record shows that MDHHS committed an agency error by failing to act on the new hire notice that it sent to Petitioner. MDHHS is required to pursue OI caused by agency errors, pursuant to policy. MDHHS further alleged that the agency error led to an OI of FAP benefits in the amount of \$9,024.00 for the period from April 1, 2022 to September 30, 2022.

The record shows that Petitioner's household received \$9,024.00 in FAP benefits from April 1, 2022 to September 30, 2022 (Exhibit A, pp. 31-32). MDHHS presented OI budgets which showed that the household was not eligible for any FAP benefits during those months due to excess income (Exhibit A, pp. 34-35). As discussed above, Petitioner did not present sufficient evidence to show that the income used in the budgets was inaccurate. Because the family exceeded the income limit for the program during those months, it was not entitled to receive any benefits, and MDHHS properly determined that Petitioner received an OI of FAP benefits based on agency error in the amount of \$9,024.00.

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 MDHHS acted in accordance with Department policy when it determined that Petitioner received a FAP OI based on client and agency error.

DECISION AND ORDER

Accordingly, MDHHS' decision is **AFFIRMED**.

LJ/pt



Linda Jordan
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

Heather Dennis
Jackson County DHHS
301 E. Louis Glick Hwy.
Jackson, MI 49201

MDHHS-Jackson-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

Jackson County DHHS
MDHHS Recoupment
MOAHR

Via-First Class Mail:

Petitioner

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Authorized Hearing Rep.

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