



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: July 23, 2024
MOAHR Docket No.: 24-006728
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: L. Alisyn Crawford

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 July 11, 2024. Petitioner was present at the hearing with her spouse [REDACTED] and they represented themselves. The Department of Health and Human Services (Department) was represented by Alison Peck, Overpayment Establishment Analyst.

ISSUE

Did the Department properly determine that Petitioner received a Food Assistance Program (FAP) overpayment (OP) due to agency error that it 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 for a household group size of four (4).
2. Petitioner's FAP group included herself, her spouse (Spouse), and their two minor children.
3. Spouse is employed at [REDACTED] (Employer).
4. On September 30, 2022, Petitioner submitted a renewal application for FAP benefits for her household. (Exhibit A, pp. 59-63). Petitioner reported Spouse's return to employment with Employer in this FAP renewal application. (Exhibit A, p. 74).

5. On July 16, 2023, the Department completed a Wage Match regarding Spouse which provided information regarding his employment with Employer.
6. On August 6, 2023, Petitioner submitted a redetermination application and disclosed Spouse's employment with Employer.
7. On September 5, 2023, the Department completed a FAP interview with Petitioner where she again disclosed that Spouse was employed with Employer.
8. On October 13, 2023, the Department sent a Notice of Case Action (NOCA) informing Petitioner that the household was approved for benefits effective October 1, 2023 through September 30, 2024 in the amount of \$973 per month for a household size of four. (Exhibit A, pp. 76-80).
9. On April 8, 2024, the Department sent a NOCA informing Petitioner that the household's FAP case would close effective May 1, 2024. (Exhibit A, pp. 83-87).
10. On April 30, 2024, the Department sent a Notice of Overissuance to Petitioner indicating Petitioner was overpaid FAP benefits during the period of May 1, 2023 through April 30, 2024 in the amount of \$11,506 due to agency error. (Exhibit A, pp. 9-14).
11. On June 3, 2024, Petitioner submitted a request for hearing to the Department disputing the Department's FAP OP determination. (Exhibit A, pp. 5-7).

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 and Spouse dispute the Department's finding that they were overpaid \$11,506 in FAP benefits from May 1, 2023 through April 30, 2024 due to an agency error. (Exhibit A, p. 3).

In this case, while Petitioner repeatedly reported Spouse's return to work, as well as the income earned from Spouse's employment, the Department acknowledged that it erred in failing to add this information to Petitioner's FAP budget which caused the overpayment. BEM 500 (April 2022), p. 1; BEM 501 (January 2024), pp. 6-7. The

Department asserts it determined Petitioner's FAP group eligibility, and issued benefits, without consideration of Petitioner's FAP group's actual income as required by policy and, as a result, Petitioner was overpaid \$11,506 in FAP benefits from May 1, 2023 through April 30, 2024 due to an agency error. BEM 505 (October 2023), pp. 1, 6-10.

Because the Department was to blame for the OP, Petitioner and Spouse contended that they should not be required to repay the Department. Department policy provides that when a client, household or provider receives more benefits than eligible to receive, the Department must attempt to recoup the overpayment (OP). BAM 700 (June 2024), p. 1. The amount of a FAP OP is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 705 (June 2024), p. 2; 7 CFR 273.18(c)(1). An OP can be caused by client error, agency error, or an intentional program violation (IPV). BAM 700, p. 2. An agency error is a type of OP resulting from an incorrect action or failure to take action by the state agency, including not using available information. BAM 705, p. 1. Here, the Department acknowledged that it did not properly process Petitioner's reported change which led to the overpayment based on an agency error.

When an OP due to agency error in excess of \$250.00 is discovered, the Department is required to establish a claim for repayment for the OP. BAM 700, p. 5; BAM 705, p. 7; 7 CFR 273.18(d)(3). Federal regulations do not allow the Department latitude to exercise discretion in establishing and pursuing a claim for OP. 7 CFR 273.18(a)(2). For OPs caused by the Department, OP periods are limited. The OP period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overpayment was referred to the recoupment specialist, whichever period is later. BAM 705, p. 5.

In the present case, the Department seeks recoupment for an overpayment period that ended April 30, 2024. Therefore, the Department was limited to pursuing the OP to the 12 months preceding this date, or May 1, 2023 to April 30, 2024 even though the evidence suggested that the Department's failure to budget Spouse's income began in October 2021. The Department is not barred from establishing an OP due to agency error for this limited period.

The Department also provided FAP OP budgets for the alleged OP period, which recalculated Petitioner's FAP benefit rate after adding the earned income from Employer. (Exhibit A, pp. 19-42). To calculate a client's FAP benefit rate, the Department must consider all countable earned and unearned income. BEM 500 (April 2022), pp. 1-5. Earned income refers to income received from another person or organization for duties that were performed for remuneration or profit. BEM 500, p. 4. Wages from employment include salaries, tips, commission, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. BEM 501 (January 2024), pp. 6-7.

In support of its calculations of an OP, the Department presented OP budgets for each month of the OP period. (Exhibit A, pp. 19-42). The Department testified that it calculated the OP total for these periods by calculating what Petitioner's FAP budget would have been for each month during the OP period had the group's earned income been included

in the household budget. (BEM 505 (October 2023), pp. 13-14; Exhibit A, pp. 19-42. To calculate Spouse's income for purposes of determining the OP, the Department utilized employment income information from the Work Number database. (Exhibit A, pp. 44-58). The Work Number is a tool provided by Equifax Verification Services that the Department uses to verify clients' employment information through wage matches.

A review of the OP budgets shows that the Department correctly calculated Petitioner's group's earned monthly income for Spouse on actual pay for each month at issue. (Exhibit A, pp. 44-58). Based on the group's earned income during the OP period, Petitioner's FAP group had gross income that exceeded the gross income limit for a four-person FAP group of [REDACTED] from May 2023 through September 2023 and [REDACTED] from October 2023 through April 2023. Although Spouse argued that the February 2024 [REDACTED] bonus should not be included in the calculation of gross income that month, because gross income includes bonuses, the Department properly considered this bonus in determining income eligibility. See BEM 501, pp. 6-7. Furthermore, even without this bonus, Petitioner had excess gross income for FAP eligibility in February 2024. Therefore, Petitioner was not eligible for any FAP benefits from May 1, 2023 through April 30, 2024. During this period, Petitioner was issued \$11,506 in FAP benefits. (Exhibit A, p. 18). Therefore, Petitioner received an OP of FAP benefits totaling \$11,506. The Department's FAP OP budgets correctly reflect that Petitioner should not have received any FAP benefits during the OP period. (Exhibit A, p. 18; see also RFT 250 (October 2022 and October 2023) and RFT 260 (October 2022 and October 2023)). Therefore, the OP of FAP benefits is \$11,506.

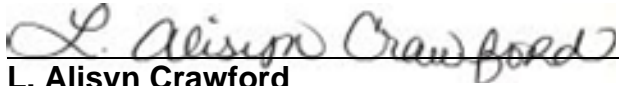
At the hearing, Petitioner expressed concerns that he is unable to repay the FAP OP given his limited income and household size. While collectability of an OP is not within the purview of the undersigned, Petitioner is advised that the Department can compromise (reduce or eliminate) an overpayment if it is determined that a household's economic circumstances are such that the overpayment cannot be paid within three years, but such a request for a policy exception may be made only by the recoupment specialist to the Overpayment, Research and Verification Section office outlining the facts of the situation and the client's financial hardship; the management of the MDHHS Overpayment, Research and Verification Section has final authorization on the determination for all compromised claims. BAM 725 (January 2021), p. 16.

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 that Petitioner received the \$11,506 overpayment of FAP benefits from May 1, 2023 through April 30, 2024 due to an agency error, which must be recouped.

DECISION AND ORDER

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

LC/ml


L. Alisyn Crawford
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

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