



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 14, 2024
MOAHR Docket No.: 24-006912
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 August 13, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Minnie Egbuonu.

ISSUE

Did the Department properly determine that Petitioner had received a Client Error (CE) overpayment (OP) 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. In April and May 2020, Petitioner's children received the benefit of Certified Medical Child Support, but no direct support.
2. From June through August 2020, the children did not receive any form of child support income.
3. On [REDACTED] 2020, Petitioner submitted a FAP application.
4. On August 13, 2020, Petitioner completed an interview with her caseworker and indicated that she was receiving Unemployment Compensation Benefits (UCB) and that she had requested to return to work. The caseworker advised Petitioner to report her employment within ten days of when she returned to work and to provide a copy of her first check stub.

5. Beginning August 28, 2020, Petitioner received biweekly pay from employment with variable hours.
6. In September 2020, two of the children began receiving both medical and direct child support which continued through at least March 2021.
7. On September 4, 2020, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefit rate of \$589.00 per month for a group size of four was based upon \$ [REDACTED] in unearned income, the \$172.00 Standard Deduction, \$1,000.00 in housing costs, and finally \$518.00 for the heat and utility standard deduction (H/U). The notice also advised her to report any changes in circumstances, including income, to the Department within ten days.
8. On September 12, 2020, Petitioner received her last UCB payment.
9. From October 2020 through December 2020, Petitioner received \$680.00 in FAP benefits per month.
10. From January 2021 through March 2021, Petitioner received \$688.00 in FAP benefits per month.
11. In January 2021, the third child began receiving direct child support income.
12. On May 11, 2021, the Department received a completed Wage Match Client Notice.
13. On May 17, 2021, an Overissuance Referral was generated.
14. On May 20, 2024, the Department issued a Notice of Overissuance to Petitioner informing her that for the period December 1, 2020 through March 31, 2021, she had received an OP of FAP benefits in the amount of \$2,720.00 based on a CE when she failed to report her income from returning to work and child support.
15. On June 3, 2024, the Department received a request for hearing from Petitioner disputing the Department's determination of a CE OP of FAP.

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 that Petitioner had received a CE OP of FAP based upon Petitioner's failure to timely report earned income for herself in addition to child support income for her children. Client error (CE) OPs exist when a client gives incorrect or incomplete information to the Department. BAM 715 (October 2017, June 2024), 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 (October 2018, June 2024), p. 1; 7 CFR 273.18(b). The Department must attempt to recoup all FAP OPs greater than \$250.00. BAM 700 (October 2018, June 2024), pp. 1, 5, 10. Policy further provides that if upon a timely hearing request, an administrative hearing decision upholds the Department's actions, the client must repay the OP. BAM 700, pp. 3-4. In CE cases, the OP period begins the first month benefit issuance exceeds the amount allowed by policy or 72 months before the date it was referred to the recoupment specialist, whichever is later. BAM 715, p. 5. The first month of the OI period is determined after application of the 10-day reporting period per BAM 105, the 10-day change processing period per BAM 220, and the 12-day negative action suspense period per BAM 220. BAM 715, p. 5. 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, each adult member of a household is responsible for payment of claims. 7 CFR 273.18(a)(4).

In reviewing this case, Petitioner returned to employment and received her first paycheck on August 28, 2020. Petitioner argues that she reported her return to work and had regularly monthly discussions with her caseworker about her wages because of the variability of her income. The Department argues that there was no notation of a conversation between Petitioner and her caseworker in the case file but failed to provide the case comments from Petitioner's electronic case file as evidence. Petitioner also began receiving direct child support for her children in September 2020. Only direct child support is received by the client and countable for purposes of determining FAP eligibility. BEM 503 (September 2020), pp. 6-7. Again, Petitioner argues that the Department was aware of the income because her caseworker was the one who applied for it on her behalf, and they spoke on a monthly basis because of the income variability, but the Department disputes any awareness of the income until the spring of 2021. Because Petitioner credibly testified as to regular monthly conversations with her caseworker regarding the variability of her income and because the Department did not present the referenced case comments or the caseworker assigned at the time of these allegations, the Department has not shown that Petitioner has committed a client error in failing to report employment and child support income. Therefore, this case is evaluated as an AE OP.

In support of its calculations of an OP, the Department presented OP budgets for each month of the OP period. In reviewing the OP budgets, the Department correctly determined that after Petitioner's employment and child support income were considered in the FAP budget, the group was over the income limit for December 2020 through March 2021. RFT 250 (October 2020), p. 1. Because the group's income was greater than the income limit, Petitioner was not eligible for any benefits and received an OP of FAP benefits. The amount of the OP is equal to the amount of benefits that Petitioner was not eligible to receive, or \$2,744.00.

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 Petitioner had received an OP of FAP in the amount of \$2,744.00 from December 2020 through March 2021. However, the Department has not met its burden of proof that the OP resulted from a CE. Therefore, this case must be reclassified as an AE OP.

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 determined Petitioner received an CE OP.

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. Reclassify the CE OP of \$2,744.00 in FAP benefits to an AE OP of \$2,744.00 in FAP benefits.
2. Notify Petitioner in writing of the reclassification of the OP.

AM/cc



Amanda M. T. Marler
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 :

Interested Parties

MDHHS-Wayne-17-hearings
BSC4-HearingDecisions
N. Denson-Sogbaka
B. Cabanaw
M. Holden
MOAHR

DHHS Department Rep.

Overpayment Establishment Section
MDHHS-RECOUPMENT-HEARINGS

Via-First Class Mail :

Petitioner

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