



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 26, 2024
MOAHR Docket No.: 24-007262
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 June 18, 2024, from Lansing, Michigan. [REDACTED] [REDACTED] the Petitioner appeared on his own behalf. The Department of Health and Human Services (Department) was represented by Minnie Egbunu, Overpayment Establishment Analyst (OEA).

During the hearing proceedings, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-85 and the additional documentation was admitted as Exhibit B, pp. 1-5.

ISSUE

Did the Department properly determine that Petitioner received Food Assistance Program (FAP) benefits that he was not eligible for and must be recouped?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. From July 1, 2023 to April 30, 2024 Petitioner received FAP benefits subject to recoupment totaling \$[REDACTED] (Exhibit A, pp. 1 and 15-16)
2. On May [REDACTED] 2023, Petitioner applied for FAP for himself and two children. Petitioner reported his employment. (Exhibit A, pp. 73-79)

3. On May █ 2023, an interview was completed with Petitioner during which Petitioner reported himself and two children in the home. Petitioner reported employment income. (Exhibit A, pp. 66-72)
4. On May █ 2023, the Department obtained a report from The Work Number to verify Petitioner's income from employment. (Exhibit A, p. 81)
5. On June █ 2023, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. FAP was approved for a household size of two because Petitioner was not an eligible group member due to being in noncooperation status with the Office of Child Support. A budget summary was included showing earned income of \$█ and no unearned income was included in the FAP budget. The Notice indicated Petitioner was a simplified reporter and was only required to report lottery or gambling winnings over a specified amount and when household gross monthly income exceeded \$1,984.00. A change in income over this amount was to be reported by the 10th day of the following month. (Exhibit A, pp. 58-63)
6. On June █ 2023, a Simplified Six Month Review was issued to Petitioner explaining the simplified reporting process. (Exhibit A, pp. 64-65)
7. Petitioner's income began exceeding the simplified reporting limit at least as of May 2023. (Exhibit A, pp. 1, 42-43, and 81; OEA Testimony)
8. On October █ 2023, Petitioner submitted a Renew Benefits adding two children to the household. Petitioner listed himself and four children in the household as of October █ 2023. (Exhibit A, pp. 55-57)
9. On October █ 2023, a Notice of Case Action was issued to Petitioner approving FAP for a household size of four. FAP was approved for a household size of four because Petitioner was not an eligible group member due to being in noncooperation status with the Office of Child Support. A budget summary was included showing earned income of \$█ and no unearned income was included in the FAP budget. This notice did not advise Petitioner that he was a simplified reporter and what the new simplified reporting limit was. (Exhibit B, pp. 1-5).
10. The Department verified Petitioner's wages during the overpayment period with a report from The Work Number. (Exhibit A, pp. 41-47)
11. The Department verified household income from child support during the overpayment period. (Exhibit A, pp. 51-54)
12. The Department determined that Petitioner was overissued FAP benefits from July 1, 2023 to April 30, 2024 in the amount of \$█ due to client error of failing to report when the household income exceeded the simplified reporting limit. (Exhibit A, pp. 1, 13-14, 18-40)

13. On May █ 2024, the Department sent Petitioner a Notice of Overissuance instructing him that a \$█ overissuance of FAP benefits occurred from July 1, 2023 to April 30, 2024 due to client error and would be recouped. (Exhibit A, pp. 7-12)
14. On June 10, 2024, the Department received Petitioner's request for a hearing protesting the recoument of FAP benefits. (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. 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.

Department policy requires clients to completely and truthfully answer all questions on forms and in interviews. BAM 105 (April 1, 2023) p. 9. Generally, clients must also report changes in circumstances that potentially affect eligibility or benefit amount within 10 days. BAM 105, pp. 11-13. However, the change reporting requirements are different for FAP simplified reporters. FAP simplified reporting households must report when the household monthly income exceeds the monthly gross income limit for its household size. 7 CFR 273.12(a)(5)(ii)(G)(1) Further, periodic reports are to be submitted on which it is requested that the household report any changes in circumstances. 7 CFR 273.12(a)(5)(iii). Similarly, Department policy regarding change reporting for FAP simplified reporting household indicates that simplified reporting groups are required to report only when the group's actual gross monthly income (not converted) exceeds the Simplified Reporting (SR) income limit for their group size. If the group has an increase in income, the group must determine their total gross income at the end of that month. 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. BAM 200, October 1, 2022, p. 1. Simplified reporting households must also complete the Simplified Six Month Review form. Groups meeting the simplified reporting category at application and redetermination are assigned a 12-month benefit period and are required to have a semi-annual contact. BAM 200, pp. 2-3.

For FAP, the Department will act on a change reported by means other than a tape match within 10 days of becoming aware of the change. A change report by tape match is to be acted upon within 15 workdays. BAM 220, April 1, 2023,

p. 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p. 13.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overpayment. BAM 700, June 1, 2024, p. 1. An agency error is a type of overpayment or underissuance resulting from an incorrect action or failure to take action by the state agency. A client error is a type of overpayment or underissuance resulting from inaccurate reporting on the part of the household. BAM 700, p. 5. Agency and client errors are not pursued if the OP amount is equal to or less than \$250 per program. BAM 700 p. 5. An overpayment may involve more than one overpayment type. If an agency error and client error occur in the same overpayment period, the Department is to process as an agency error. BAM 700, p. 3.

In this case, the Department asserted that Petitioner was a simplified reporter that failed to report when the household's monthly gross income exceeded the applicable simplified reporting limit, resulting in an overpayment of FAP benefits from July 1, 2023 to April 30, 2024 in the amount of \$[REDACTED]. Petitioner's household changed from three to five when two children were added in effective November 1, 2023. However, Petitioner was not an eligible group member due to being in noncooperation status with the Office of Child Support. On May [REDACTED] 2024, the Department sent Petitioner a Notice of Overissuance instructing him that a \$[REDACTED] overissuance of FAP benefits occurred from July 1, 2023 to April 30, 2024 due to client error and would be recouped. (Exhibit A, pp. 7-12 (Exhibit A, pp. 1 and 7-12; OEA Testimony).

The evidence shows that the Department was aware that the gross household income exceeded the simplified reporting limit when the household was approved as a simplified reporting household. The June [REDACTED] 2023, Notice of Case Action issued to Petitioner included a budget summary showing earned income of \$[REDACTED] and no unearned income was included in the FAP budget. The Notice indicated Petitioner was a simplified reporter and was only required to report lottery or gambling winnings over a specified amount and when household gross monthly income exceeded \$1,984.00. (Exhibit A, pp. 58-63). Additionally, the Department's investigation report notes that when Petitioner submitted the May [REDACTED], 2023 application, the Department obtained a report from The Work Number on May [REDACTED] 2023 to verify his income. This report showed Petitioner's income greatly exceeded the simplified reporting limit in April 2023 and March 2023, yet FAP was approved anyways. (Exhibit A, p. 81). Additionally, the October [REDACTED] 2023 Notice of Case Action did not advise Petitioner that he was a simplified reporter and what the new simplified reporting limit was. (Exhibit B, pp. 1-5). Accordingly, there were agency errors that contributed to the overpayment.

Petitioner explained his ongoing fight for child custody and that two children could not be on his FAP case initially because they were still on their mother's case. Petitioner acknowledged that he was not keeping track of the household's gross monthly income with everything that was going on. (Petitioner Testimony).

Overall, the evidence supports the Department's determination that Petitioner received an overpayment of FAP benefits from July 1, 2023 to April 30, 2024 in the amount of \$[REDACTED]. However, the overpayment was caused by both client and agency errors. Pursuant to the BAM 700 policy, the overpayment should be processed as an agency error. The above cited BAM 700 policy requires the Department to recoup the overissuance when a client group receives more benefits than it is entitled to receive. This includes overpayments caused by agency error when the amount is at least \$250 per program. Therefore, the Department properly sought recoupment of a \$[REDACTED] overissuance of FAP benefits from Petitioner.

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 \$[REDACTED] overpayment of FAP benefits from July 1, 2023 to April 30, 2024, which must be recouped. However, the Department did not act in accordance with Department policy when it processed the overpayment as a client error. The overpayment should have been processed as an agency error.

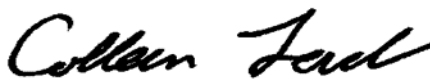
DECISION AND ORDER

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. Process the \$[REDACTED] overpayment of FAP benefits from July 1, 2023 to April 30, 2024 as an agency error in accordance with Department policy.

CL/dm



Colleen Lack
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
Kristina Etheridge
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MOAHR

Via-First Class Mail :

Petitioner
[REDACTED]
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