



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

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██████████, MI ██████████

Date Mailed: August 26, 2024
MOAHR Docket No.: 24-007953
Agency No.: ██████████
Petitioner: ██████████

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 15, 2024, via teleconference. Petitioner appeared and represented herself. Eugene Brown, Overpayment Establishment Analyst, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department). MDHHS’ Hearing Packet was admitted into evidence as MDHHS Exhibit A, pp. 1-228.

ISSUES

1. Did MDHHS properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits based on agency error?
2. Did MDHHS properly determine that Petitioner received an OI of FAP benefits based on client error?
3. Did MDHHS properly determine that Petitioner received an OI of State Disability Assistance (Cash/SDA) benefits based on client 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. On May 4, 2022, ██████████ (Spouse) began working at ██████████ (Employer), receiving his first paycheck on ██████████ 2022 (Exhibit A, pp. 51-52). Spouse continued working at Employer until June 18, 2023 (Exhibit A, p. 52).
2. On ██████████ 2022, Petitioner submitted a benefits application, reporting a household of one (Exhibit A, pp. 58-60). Petitioner reported receiving income from her employment (Exhibit A, p. 63).

3. On December 22, 2022, Petitioner completed an eligibility interview with MDHHS, and reported living with Spouse and that they purchased and prepared food together (Exhibit A, p. 68). Petitioner reported that Spouse was employed at Employer but had not received income in the last 30 days due to a shortage of assignments (Exhibit A, p. 72).
4. On December 22, 2022, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits for a household of two, beginning January 1, 2023 (Exhibit A, p. 75). The FAP benefit rate was based on earned income (Exhibit A, p. 76). The notice included that Petitioner was in the Simplified Reporting (SR) category and that she must report changes if the household income exceeds the SR limit of \$1,984.00 (Exhibit A, p. 76-77).
5. On [REDACTED] 2023, Petitioner submitted an assistance application for SDA/Cash Assistance benefits to MDHHS, reporting a household of one (Exhibit A, pp. 173-175).
6. On May 1, 2023, MDHHS sent Petitioner a Semi-Annual Contact Report, indicating that Petitioner must return the form to MDHHS by May 22, 2023 (Exhibit A, p. 98).
7. On May 8, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that she was denied for Cash benefits, effective May 16, 2023 (Exhibit A, p. 185). Spouse was included in Petitioner's Cash Assistance group (Exhibit A, p. 186).
8. On May 15, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits for a household of two, from December 19, 2022 through December 31, 2022 and April 1, 2023 through December 31, 2023 (Exhibit A, p. 83). The FAP benefit rate was based on \$3,012.00 in earned income (Exhibit A, p. 84). The notice included that Petitioner was in the SR category and that she must report changes if the household income exceeds the SR limit of \$1,984.00 (Exhibit A, p. 85).
9. On May 22, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that her FAP benefits increased for a household of two, from April 1, 2023 through December 31, 2023 (Exhibit A, p. 91). The FAP benefit rate was based on no earned income (Exhibit A, p. 92). The notice indicated that Petitioner was in the SR category and that she must report changes if the household income exceeds the SR limit for a household of two, which was \$1,984.00 (Exhibit A, p. 92).
10. On June 2, 2023, MDHHS completed an eligibility interview with Petitioner for Cash assistance (Exhibit A, p. 197). Petitioner reported residing with Spouse (Exhibit A, p. 197).
11. On July 10, 2023, Petitioner reported to MDHHS that Spouse no longer lived in her household (Exhibit A, p. 103). Petitioner reported that Spouse moved out two weeks prior (Exhibit A, p. 103).

12. On July 21, 2023, Petitioner called MDHHS to inquire about her FAP benefits (Exhibit A, p. 104). MDHHS indicated that the Semi-Annual Contact Report was not returned (Exhibit A, p. 104).
13. On July 26, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that her FAP benefits were approved for a household of one, from July 1, 2023 through December 31, 2023 (Exhibit A, p. 105). The FAP benefit rate was based on removing Spouse from the household and on no earned income (Exhibit A, p. 106). The notice indicated that Petitioner was in the SR category and that she must report changes if the household income exceeds the SR limit of \$1,473.00 (Exhibit A, p. 106).
14. On September 11, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for Cash assistance for a household of one, beginning June 1, 2023 (Exhibit A, p. 206).
15. On October 17, 2023, Petitioner called MDHHS to confirm that Spouse was removed from her household (Exhibit A, p. 111). MDHHS answered in the affirmative (Exhibit A, p. 114).
16. On or about October 23, 2023, Petitioner submitted a FAP and Medicaid (MA) Redetermination to MDHHS, reporting a household of one and no earned income (Exhibit A, p. 112).
17. On November 13, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that her cash benefits decreased, from December 1, 2023 ongoing, and that she was approved for FAP benefits for a household of one, from December 1, 2023 through November 30, 2024 (Exhibit A, p. 127). The FAP benefit rate was based on no earned income (Exhibit A, p. 129). The notice included that Petitioner was in the SR category and that she must report changes if the household income exceeds the SR limit of \$1,580.00 (Exhibit A, p. 129).
18. On May 21, 2024, MDHHS interviewed Spouse who reported that Petitioner and Spouse lived together continuously for 15 years until May 11, 2024 (Exhibit A, p. 221).
19. On June 18, 2024, MDHHS sent Petitioner a Notice of Overissuance, indicating that she received more FAP benefits than she was eligible to receive from July 1, 2023 to November 30, 2023 (Exhibit A, p. 10). The Notice indicated that the OI was due to agency error because MDHHS continued Petitioner's FAP benefits despite Petitioner's failure to complete the semi-annual review by the due date of June 30, 2023 (Exhibit A, p. 10). The notice stated that the amount of the OI was \$1,405.00 (Exhibit A, p. 10).
20. On June 18, 2024, MDHHS sent Petitioner a Notice of Overissuance, indicating that she received more FAP benefits than she was eligible to receive from December 1, 2022 to June 30, 2023 (Exhibit A, p. 21). The Notice indicated that the OI was due to client error because Petitioner did not disclose Spouse's earnings at the time of

application (Exhibit A, p. 21). The notice stated that the amount of the OI was \$1,900.00 (Exhibit A, p. 21).

21. On June 18, 2024, MDHHS sent Petitioner a Notice of Overissuance, indicating that she received more Cash Assistance benefits than she was eligible to receive from June 1, 2023 to January 31, 2024 (Exhibit A, p. 136). The Notice indicated that the OI was due to client error (Exhibit A, p. 136). The notice stated that the amount of the OI was \$1,465.00 (Exhibit A, p. 136).
22. On July 2, 2024, Petitioner filed a Request for Hearing disputing MDHHS' determinations regarding the FAP and SDA OIs (Exhibit A, p. 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.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. MDHHS administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

In this case, MDHHS alleged that Petitioner received a FAP OI based on agency error, a FAP OI based on client error and an OI of SDA/Cash Assistance based on client error. The basis of the client error is that Petitioner falsely reported that Spouse was no longer in her household and failed to report his income. Clients have a responsibility to completely and truthfully answer all questions on forms and in interviews. BAM 105 (April 2022), p. 9.

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.

Here, MDHHS alleged that Petitioner committed a client error that led to a FAP OI by failing to disclose Spouse's income from Employer at the time of application (Exhibit A, p. 21). MDHHS alleged that this error led to a FAP OI in the amount of \$1,900.00 for the period of December 1, 2022 to June 30, 2023 (Exhibit A, p. 21). Although the record shows that Petitioner did not list Spouse's employment on the December 19, 2022 benefits application, she did report him in the household during the eligibility interview (Exhibit A, p. 68). During that interview, she reported that he worked at Employer but that he had not received income in the last 30 days (Exhibit A, p. 72). The employment records from Employer show that Petitioner received earnings in November and December 2022, which makes Petitioner's statement inaccurate (Exhibit A, pp. 53-54).

However, it is unclear why MDHHS did not verify Spouse's income information at the time of application. MDHHS is required to verify information when it is required by policy and when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130 (June 2022), p. 1. Regarding income, MDHHS is required to verify all non-excluded income at application, including program add, prior to authorizing benefits. Accordingly, MDHHS should have verified Spouse's income at application and the record does not show that it did so in this case. The failure to verify Spouse's income constitutes an agency error. Thus, MDHHS has not properly demonstrated that the OI was caused by client error.

For the second FAP OI, MDHHS alleged that the OI was caused by agency error because MDHHS incorrectly authorized Petitioner's FAP benefits despite not receiving the Semi-Annual Contact Report, which caused an OI in the amount of \$1,405.00 from July 1, 2023 to November 30, 2023 (Exhibit A, p. 10). Although no information was presented that Petitioner did complete the semi-annual, the calculation of the OI amount is based on a group-size of two, which MDHHS failed to show was accurate at the hearing, as described in more detail below.

On July 10, 2023, Petitioner reported to MDHHS that Spouse no longer lived in her household (Exhibit A, p. 103). Petitioner reported that Spouse moved out two weeks prior (Exhibit A, p. 103). MDHHS alleged that this was a false statement because it interviewed Spouse and Spouse reported that he and Petitioner lived with each other continuously for fifteen years until May 11, 2024 (Exhibit A, p. 221). This out-of-court statement was introduced at the hearing as part of an e-mail chain, which included an excerpt from an MDHHS Office of Inspector General (OIG) investigation (Exhibit A, p. 221). MDHHS did not present a sworn affidavit from Spouse and Spouse did not participate in the hearing to provide sworn testimony.

During the hearing, Petitioner testified that she and Spouse were separated and that she properly reported when he was no longer in her household. Petitioner further reported that the relationship was tumultuous and involved domestic violence. Given that Petitioner's statements were given under oath, they carry more weight and are more credible than MDHHS' summary of Spouse's statements. Additionally, the record shows that Petitioner reported to MDHHS that Spouse was out of the household beginning in June 2023 multiple times. Therefore, MDHHS did not introduce adequate evidence to show that Petitioner's statements regarding her household size were inaccurate. Given

this deficiency, MDHHS has failed to show that Petitioner received a FAP OI based on agency error for the period of July 1, 2023 to November 30, 2023.

The alleged SDA/Cash Assistance OI suffers from the same deficiency. MDHHS alleged that Petitioner received an OI of Cash benefits from June 1, 2023 to January 31, 2024, due to client error, in the amount of \$1,465.00 (Exhibit A, p. 136). The basis for the SDA OI as not listed on the Notice of Overissuance; however, MDHHS testified that it was for Petitioner's failure to report Spouse in the household at the time of application. Based on Petitioner's reports regarding her household size, Spouse was no longer in her household as of June 2023. The budget that MDHHS presented calculates an SDA OI from June 2023 to January 2024, based on a household of two. For the reasons described above, MDHHS has not established that Petitioner had a household of two during that time period. Thus, it cannot sustain an SDA OI on that basis.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner received a FAP OI and SDA OI based on client error and a FAP OI based on agency error.

DECISION AND ORDER

Accordingly, MDHHS decision is **REVERSED** because MDHHS failed to establish that Petitioner received a FAP OI of \$1,405.00 based on agency error, a FAP OI of \$1,900.00 based on client error, or an SDA/Cash Assistance OI of \$1,465.00 based on client error. **IT IS ORDERED** that MDHHS delete the FAP and SDA OIs in their entirety and cease any recoupment/collection action.

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
Kimberly Kornoelje
Kent County DHHS
121 Martin Luther King Jr St SE
Grand Rapids, MI 49507
MDHHS-Kent-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
BSC3
L. Karadsheh
M Holden
B Cabanaw
N Denson-Sogbaka
MOAHR

Via-First Class Mail:

Petitioner
[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]