



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], MI [REDACTED]

Date Mailed: September 26, 2024
MOAHR Docket No.: 24-009056
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 September 9, 2024. Petitioner was represented by Authorized Hearing Representative (AHR) [REDACTED]. The Department of Health and Human Services (Department) was represented by Anna Peterson, Overpayment Establishment Analyst.

ISSUE

Did the Department properly determine that Petitioner had been overissued Food Assistance Program (FAP) benefits due to agency error (AE)?

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 for a group size of one.
2. As of May 2, 2022, Petitioner resided in a nonprofit independent living facility, which provides his meals, where he remains, without interruption, as of the hearing date. (Exhibit A, pp. 104-106).
3. Petitioner timely reported this change in circumstances to the Department.
4. From February 1, 2023 through January 1, 2024, Petitioner was issued \$1,904 in FAP benefits, including pandemic supplements, for a group size of one. (Exhibit A, pp. 13, 18, 20-21).
5. On March 8, 2024, the Department issued a Notice of Overissuance to Petitioner informing him that he was overissued FAP benefits from February 1, 2023 through

January 1, 2024 in the amount of \$1,904 due to agency error (AE) because the Department failed to update Petitioner's living arrangements when it was reported. (Exhibit A, p. 12).

6. On July 24, 2024, the Department received a hearing request from Petitioner to dispute that he was overpaid FAP benefits. (Exhibit A, pp. 3-7).

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.

Preliminary Matter

The Department first argued that the Petitioner's July 24, 2024 hearing request was not timely filed within ninety days of the March 8, 2024 Notice of Overissuance and thus, should be dismissed for lack of jurisdiction. However, at the hearing, the Petitioner's AHR provided credible testimony regarding her attempts to dispute the Department's March 8, 2024 determination. Further, the Department provided evidence from the Department's Case Comments that noted Petitioner's AHR contacted the Department on May 6, 2024 and May 9, 2024 disputing the Department's determination. (Exhibit B, p. 1). The Department also had documentation that Petitioner had authorized his AHR to act on his behalf concerning his FAP case. (Exhibit A, p. 100). Because individuals may verbally request hearings concerning FAP, the Petitioner's hearing request is found to be timely based on the AHR's documented attempts in May 2024 to dispute the Department's determination.

FAP Overpayment

In this case, Petitioner requested a hearing disputing that he must repay overissued benefits due to the Department's error. Petitioner's AHR argues Petitioner should not have to repay any benefits due to the Department's error and states that the benefits were used and needed when Petitioner did not eat at his facility.

The Department contends that Petitioner became ineligible for FAP once Petitioner entered an independent living facility in 2022 that the AHR acknowledged provides Petitioner with three prepared meals per day. Individuals must be considered residents of an institution when the institution provides them with the majority of their meals (over

50 percent of three meals daily) as part of the institution's normal services. CFR § 273.1(b)(7)(vi); BEM 265 (April 2018), p. 2; BEM 615 (October 2023), p. 1. Residents of institutions may qualify for FAP only if the facility is either (i) authorized by FNS to accept FAP benefits or (ii) an eligible group living facility as defined in BEM 615. BEM 265, p. 2; BEM 212 (March 2024), p. 8. The group living facilities that qualify for FAP include non-profit adult foster care (AFC) homes for 16 or fewer residents licensed by the State; Community Mental Health or MDHHS Supported Community Living Programs; homes for the aged licensed by the State; and federally subsidized housing for the elderly. See BEM 615.

Here, Petitioner resided in an institution, and there was no evidence that the facility was authorized to accept FAP or an eligible group living facility. Therefore, Petitioner was not eligible for FAP benefits while residing in the facility. Petitioner properly and timely reported this change in circumstances to the Department. The Department testified that they failed to update this change timely. Since Petitioner did not meet criteria for FAP eligibility once he was admitted to the facility, the Department erred in issuing him FAP benefits. Therefore, the Department properly concluded that Petitioner was overissued FAP benefits due to agency error.

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OP as a recipient claim. 7 CFR 273.18(a)(2); BAM 700 (June 2024), pp. 1-2. An agency error OP is caused by incorrect actions by the Department, including delayed or no action, which result in the client receiving more benefits than they were entitled to receive. The amount of the OP is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, pp. 4-6; BAM 705 (June 2024), pp. 1-6. The OP period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OP was referred to the recoupment specialist, whichever 12-month period is later. BAM 705, p. 5.

In this case, the Department conducted a FAP Quality Control Review and based on its review, it determined that Petitioner was overpaid FAP benefits due to an agency error when the Department did not verify the household's living arrangements when first reported in May 2022. See BEM 212. On November 15, 2023, the Department spoke with the property manager at Petitioner's facility and confirmed that the facility is an independent living facility that provides its residents with three prepared meals per day as part of their monthly living expense, which residents are unable to opt out from receiving. (Exhibit A, pp. 104, 106).

Since Petitioner was not eligible to receive FAP benefits, all benefits issued to him during the OP period were overissued. In reviewing the Benefit Summary Inquiry, which shows the FAP benefits issued to Petitioner each month, the Department properly calculated the OP amount to include both Petitioner's monthly FAP allotment and, for February 2023, a FAP emergency allotment (EA) payment made to Petitioner. (Exhibit A, pp. 13; 18-21). EAs were issued from April 2020 to February 2023 to FAP recipients due to the COVID-19 pandemic to bring their benefit amount to the maximum for their group size and are recoupable by the Department if the FAP household is not eligible for any FAP benefits

during the month at issue. ESA Memo 2020-15 (March 2020; updated December 2020). Therefore, the Department properly determined that Petitioner received an OP of FAP benefits for which the Department may recoup in the amount of \$1,904.

At the hearing, Petitioner's AHR expressed concerns about being able to repay the FAP OP given Petitioner's limited income. While collectability of an OP is not within the purview of the undersigned, Petitioner's AHR is advised that the Department may 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 manager 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 an OP of FAP benefits in the amount of \$1,904 due to agency error.

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

Tracey Jones
Oakland County Southfield District III
25620 W. 8 Mile Rd
Southfield, MI 48033
MDHHS-Oakland-6303-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

BSC4
M. Holden
B Cabanaw
N Denson-Sogbaka
MOAHR

Via First Class Mail:

Authorized Hearing Rep.

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

Petitioner

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