



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: October 29, 2024  
MOAHR Docket No.: 24-009850  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

**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 October 9, 2024. Petitioner was present at the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Kathleen Zewatsky, Overpayment Establishment Analyst. The hearing was conducted before Administrative Law Judge (ALJ) L. Alisyn Crawford. Because ALJ Crawford is unavailable, the undersigned reviewed the record and issued this Hearing Decision based on the evidence presented. See Mich Admin Code, R 792.10106(7).

**ISSUE**

Did Petitioner receive an overpayment (OP) of Food Assistance Program (FAP) benefits due to a client error that the Department 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. On July 13, 2020, the Department received an assistance application requesting FAP benefits for Petitioner, his wife, and two children. (Exhibit A, pp. 40-60). Petitioner reported that he was recently unemployed, and the only household income was Social Security benefits for Petitioner's son. (Exhibit A, p. 45).
2. On July 20, 2020, the Department sent a Notice of Case Action (NOCA) to Petitioner informing him that he was approved for FAP benefits effective July 13, 2020 for \$395 per month for a FAP group size of four. (Exhibit A, pp. 22-29). The NOCA included a Change Report form that explained Petitioner's rights and responsibilities as a

Change Reporter and informed him that he was obligated to report changes within ten days of the change. (Exhibit A, p. 27).

3. On May 7, 2021, the Department sent a Wage Match Client Notice to be completed by Petitioner's employer, [REDACTED] (Employer), with a due date of June 7, 2021. (Exhibit A, pp. 32-36)
4. On June 4, 2021, the Department received the completed wage verification from Employer. (Exhibit A, pp. 32-36) Employer indicated that Petitioner's employment began on July 28, 2020 and ended on February 2, 2021 and that Petitioner received his first paycheck from Employer on October 2, 2020. (Exhibit A, p. 34)
5. On August 20, 2024, the Department sent a Notice of Overissuance to Petitioner informing him that he received FAP benefits that he was not eligible to receive from December 1, 2020 to February 28, 2021 in the amount of \$2,142 due to client error. (Exhibit A, pp. 7-12)
6. On August 26, 2024, the Department received a request for hearing from Petitioner disputing the alleged overpayment. (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.

In this case, Petitioner disputes that he was overissued FAP benefits in the amount of \$2,142 from December 1, 2020 to February 28, 2021 due to a client error.

When a client group receives more benefits than entitled to receive and the OP is in excess of \$250.00, the Department must attempt to recoup the OP as a recipient claim. BAM 700 (June 2024), pp. 1, 5; 7 CFR 273.18(a)(2). A FAP OP can be caused by client error, agency error, or an intentional program violation (IPV). BAM 700, pp. 5-9. An OP due to client error results from the household's inaccurate reporting. BAM 715 (June 2024), p. 1. Department policy requires clients to completely and truthfully answer all questions on forms and in interviews and to report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of the change. BAM 105 (March 2024) pp. 9, 11-13.

Here, the evidence established that Petitioner did not report his employment until June 2021, after his employment had ended, and only in response to a Wage Match sent to him by the Department. Therefore, to the extent Petitioner was overpaid FAP benefits, the overpayment was due to client error.

For OPs due to client error, the OP period cannot include months that occurred more than six years before the OP discovery date. BAM 715, p. 3; 7 CFR 273.189c)(1)(i). For client errors that do not occur at application or at redetermination, to determine the first month of the OP, the Department must allow time for the client 10-day reporting period, the 10-day standard of promptness for change processing, and the 12-day negative action suspense period. BAM 715, p. 3. For income changes, the client has 10 days from the date of receiving the first payment reflecting the change to report the change. BAM 105, p. 10. The overpayment period ends the month before the benefit is corrected or month of program closure. BAM 715, p. 3.

Here, the Department sought an OP for December 2020 through February 2021, which is within six years of the date the OP was discovered. Based on Petitioner receiving his first paycheck on October 2, 2020, Petitioner was required to report the change by October 12 and the change would affect benefits beginning December 2020. Therefore, the Department properly commenced the OP period December 2020. Because employment, and the earned income, ended February 2021, the Department properly ended the OP period that month.

The amount of a FAP OP is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 715, pp. 4-6; 7 CFR 273.18(c)(1). An OP calculation cannot include the 15 percent benefit increase issued during the months of January 2021 through June 2021 per the Consolidated Appropriations Act of 2021. BAM 715, p. 2. The Department established that during the OP period from December 2020 to February 2021, Petitioner received \$680 in FAP benefits for December 2020 and \$782 monthly in FAP benefits in January 2021 and in February 2021. While the Department acknowledged that \$102 of FAP benefits paid to Petitioner in January 2021 was the 15% benefit increase that was not recoverable, the Department did not satisfy its burden of showing that the comparable additional funds Petitioner received in February 2021 over the \$680 maximum for his four-person FAP group was not also the 15% federal benefit paid to him that month that should also have been excluded from the calculation of the OP. Furthermore, the FAP OP budgets that the Department presented to show that Petitioner had excess gross income for FAP eligibility for his FAP group in December 2020 and January 2021, and excess net income for FAP eligibility in February 2021, showed that the Department considered Petitioner's FAP group to consist of three household members and used the gross and net income limits for a three-person household. See RFT 250 (October), p. 1. However, Petitioner's July 13, 2020 FAP application and the July 20, 2020 NOCA approving Petitioner for FAP indicated that his household consisted of four group members: Petitioner, his wife, and their two minor children. The Department did not present any evidence that Petitioner's FAP group had decreased to three between December 2020 and February 2021. Further, the FAP allotment issued to Petitioner was the maximum FAP allotment for four-person

households. See RFT 260 (October 2020), p. 1. During the hearing, the Department acknowledged an error in group size used in the OP budgets.

Because the Department failed to establish that (i) it excluded the 15% federal benefit increase from the OP for February 2021 and (ii) Petitioner's FAP group size had decreased to three for December 2020 to February 2021, the Department failed to establish that it properly calculated the 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 did not act in accordance with Department policy when it calculated the 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. Recalculate Petitioner's OP for the corrected group size for December 1, 2020 to February 28, 2021;
2. Exclude from the OP any 15% federal benefit increase Petitioner received in February 2021; and
3. Notify Petitioner of its decision in writing.

ACE/ml



**Alice C. Elkin**

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**

Gary Leathorn - 74  
St Clair County DHHS  
220 Fort St.  
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**MDHHS-STCLAIR-HEARINGS@michigan.gov**

**DHHS Department Rep.**

Overpayment Establishment Section (OES)  
235 S Grand Ave, Ste 811  
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**MDHHS-RECOUPMENT-HEARINGS@Michigan.gov**

**Interested Parties**

BSC4  
M. Holden  
B Cabanaw  
N Denson-Sogbaka  
MOAHR

**Via First Class Mail:**

**Petitioner**

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