



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

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Date Mailed: November 1, 2024
MOAHR Docket No.: 24-010478
Agency No.: ██████████
Petitioner: ██████████

SUPERVISING 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 hearing was held via telephone conference on October 14, 2024. Petitioner was present and unrepresented. The Department of Health and Human Services (Department) was represented by Kathleen Zewatski, 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, including the recording of the hearing, and issued this Hearing Decision based on the evidence presented. See Mich Admin Code, R 792.10106(7).

ISSUE

Did the Department properly determine that Petitioner was issued a Food Assistance Program (FAP) benefit overpayment (OP) that the Department is entitled to recover?

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 ██████████ 2020, Petitioner applied for FAP for herself, her husband (Husband), and their three minor children and reported that Husband was employed by Aptive (Employer). (Exhibit A, pp. 69-75)
2. On October 29, 2020, the Department sent Petitioner a Notice of Case Action notifying her that she was approved for \$807 in monthly FAP for her 5-person household based on ██████████ of earned income. (Exhibit B, pp. 1-8)

3. On October 22, 2021, the Department's Office of Inspector General (OIG) received a fraud investigation referral from the Investigative Analytic Unit alleging that in 2020 Petitioner's income exceeded the FAP income limit. (Exhibit A, p. 87).
4. On January 29, 2024, the OIG investigation concluded that there was an overpayment due to the Department's failure to properly budget Husband's income at Employer that Petitioner had disclosed in the application. (Exhibit A, pp. 85-89)
5. On February 9, 2024, the Department sent Petitioner a Notice of Overissuance notifying her that she had received an overpayment of FAP benefits totaling \$9,059 for the period of October 1, 2020 to September 30, 2021 as a result of agency error. (Exhibit A, pp. 7-12)
6. On September 5, 2024, the Department received Petitioner's third hearing request to dispute the OP. (Exhibit A, p. 4.)

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 the Department's determination in the February 9, 2024 Notice of Overissuance that she received an overpayment (OP) of FAP benefits in the amount of \$9,059 due to an agency error. Although the Department argued that Petitioner's hearing request, which it received on September 5, 2024, was untimely, during the hearing the Department acknowledged that Petitioner had verbally requested a hearing on March 4, 2024 and it received a written hearing request on April 30, 2024. Because both those requests were received by the Department within 90 days of the date the Notice of Overissuance was issued, the hearing request disputing the FAP OP was timely, and the hearing proceeded to address the OP issue. See BAM 600 (February 2024), p. 7.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OP. 7 CFR 273.18(a)(2); BAM 700 (October 2018), p. 1-2. Agency error OPs are caused by incorrect actions by the Department, including delays or no action, which result in the client receiving more benefits than they were entitled to receive. BAM 705 (October 2018), p. 1; 7 CFR 273.18(b). In an agency

error OP, the OP period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the recoupment specialist, whichever 12-month period is later. BAM 705 (October 2018), p. 5. The amount of the OP is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 715 (October 2017), p. 6; BAM 705 (October 2015), p. 6.

Here, Petitioner reported in her [REDACTED] 2020 FAP application that Husband was employed, but the Department failed to properly budget his income. Because the matter was referred to OIG for investigation on October 22, 2021, the Department properly limited the OP period for this agency error to the 12 month period from October 1, 2020 to September 30, 2021.

To establish the OP amounts, the Department presented a benefit summary inquiry showing the FAP benefits issued to Petitioner between October 2020 and September 2021. The benefit summary inquiry established that the Department issued FAP benefits to Petitioner during the OP period that included (i) the monthly allotment, (ii) emergency allotments (EAs) issued between April 2020 and February 2023 that brought FAP recipients to the maximum for their group sizes (plus up to an additional \$95), (iii) the 15% federal benefit issuance issued between January 2021 and September 2021, and (iv) Pandemic electronic benefit transfers (PEBT) issued during the Covid-19 public health emergency for certain households with minors. (Exhibit A, pp. 16-20) In determining recoverable benefits issued to Petitioner as shown on the issuance summary (Exhibit A, p. 21), a review of the benefit summary issuance shows that the Department properly included the monthly allotment and the EAs, which are recoverable, and excluded the 15% federal benefit and the PEBT issuances, which are not recoverable. See BAM 705 (June 2024), p. 3; Economic Stability Administration (ESA) Memo, 2023-33 (July 5, 2023); ESA Memo 2023-10 (February 8, 2023).

The Department also presented OP budgets for each of the months in the OP period other than March 2021 that it asserted established that for any of those months Petitioner's household was ineligible for FAP benefits when Husband's income was budgeted into determining Petitioner's FAP eligibility. (Exhibit A, pp. 21-47) When employment income is improperly budgeted due to agency error, the client is entitled to have the 20% earned income deduction applied in the determination of the household's net income. See BAM 715 (June 2024), p. 6; BEM 556 (October 2024), p. 3. Department policy further provides that if improper budgeting of income caused an overpayment, actual income for that income source is converted to a standard monthly amount, but any income properly budgeted remains the same in the corrected budget month(s). BAM 705 (June 2024), p. 6.

A review of the OP budgets in this case shows that the Department properly applied the 20% earned income deduction in determining the household's net income when Husband's income was added in determining FAP eligibility. However, the budgets show that, in addition to budgeting Husband's actual income and converting it to a standard monthly amount, the Department redetermined Petitioner's earned income. There was no

evidence presented at the hearing that Petitioner's employment income was improperly budgeted at the time that Petitioner's household was approved for FAP. To the contrary, the OIG investigation report indicates that the only income being budgeted at the time the application was processed was Petitioner's employment income (Exhibit A, p. 88), and the October 29, 2020 Notice of Case Action indicates that [REDACTED] in monthly earned income was being budgeted (Exhibit A, p. 2). The Department presented no explanation as to why Petitioner's earned income was recalculated in the OP budgets. Accordingly, the Department failed to establish that it acted in accordance with Department policy when it changed the monthly amount for Petitioner's employment income in the OP budgets when it calculated the OP amount.

DECISION AND ORDER

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 an OP to Petitioner of FAP benefits totaling \$9,059.

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 the OP to include Husband's unbudgeted income from Employer but without redetermining Petitioner's earned income budgeted in the original FAP budgets during the OP months;
2. Notify Petitioner in writing of its determination.

AE/ml



Alice C. Elkin

Supervising 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:

Agency Representative

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