



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: December 11, 2024
MOAHR Docket No.: 24-011102
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 over the course of two days on October 28, 2024, and November 14, 2024, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Eugene Brown, Overpayment Establishment Analyst.

Exhibit A, pages 1-564 were admitted into the record as evidence on behalf of the Department. Petitioner did not offer any documents for admission as evidence.

ISSUE

Did Petitioner receive a overissuance (OI) of Food Assistance Program (FAP) and Family Independence Program (FIP) benefits 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. Petitioner was an ongoing recipient of FAP and FIP benefits.
2. On or around March 4, 2019, the Department sent Petitioner a redetermination for her FAP case that she was instructed to complete and return to the Department by April 4, 2019. A redetermination interview was scheduled for April 4, 2019. (Exhibit A, pp. 32-40)
3. On or around March 30, 2019, Petitioner submitted an application requesting State Emergency Relief (SER) assistance. (Exhibit A, pp. 41-46)

4. On or around April 2, 2019, Petitioner participated in an SER application interview. (Exhibit A, pp. 47-48)
5. On or around April 10, 2019, the Department sent Petitioner a Notice of Case Action, approving her for ongoing FAP benefits and advising her that from May 1, 2019, through April 30, 2020, she was approved for FAP benefits in the amount of \$505 for her three-person household that included herself and her two children. (Exhibit A, pp. 49-52)
 - a. The April 10, 2019, Notice of Case Action further states: “Ms. Howard you had a redetermination for your food assistance and medical due this month 4/2019. Due to the new application and the pre-hearing conference that you attended, the department is using that application as your redetermination. The only verification that is being asked of you to submit is a copy of your Lease showing your rental amount and what is included.” (Exhibit A, pp. 49-52)
6. The Department asserted that Petitioner failed to return the FAP redetermination or a FAP application prior to the end of the April 30, 2019, certification period. The Department asserted that Petitioner’s FAP case should have closed effective May 1, 2019, because she failed to return the redetermination.
7. On or around April 4, 2020, Petitioner submitted an application requesting FIP benefits from the Department. Petitioner reported herself and two of her children as members of household. Petitioner also reported that she was currently pregnant and expecting one child. On or around April 14, 2020, the Department sent Petitioner a notice of Case Action, approving her for FIP benefits in the amount of \$492 effective May 1, 2020, ongoing. (Exhibit A, pp.431-442)
8. On or around September 5, 2020, Petitioner submitted a redetermination for her FAP case. On or around September 24, 2020, Petitioner participated in a redetermination interview for her FAP case, during which she reported that the father of her child, Mr. Spivey is involved in the child’s life but does not live in her home and does not stay overnights in the home. On September 24, 2020, the Department issued a Notice of Case Action, approving Petitioner for FAP benefits from October 1, 2020, through September 30, 2021, based on a household size of three. (Exhibit A, pp. 65-74)
9. On or around January 22, 2021, Petitioner submitted a redetermination for her FIP case and was subsequently approved for continued FIP benefits. (Exhibit A, pp. 462-473)
10. On or around August 27, 2021, Petitioner submitted a redetermination for her FAP case. On or around September 1, 2021, Petitioner participated in a redetermination interview for her FAP case. Petitioner was approved for ongoing FAP benefits for herself and three children. (Exhibit A, pp. 124-159)

11. On or around August 5, 2022, Petitioner submitted a redetermination for her FAP case. On or around August 29, 2022, Petitioner participated in a redetermination interview for her FAP case. During the redetermination interview, Petitioner verified that no one else resides in her home besides herself and the three children. Petitioner confirmed that Chris Spivey is the father of two of her children and that the children do not spend the night at his home. Petitioner reported to the Department that she was separated, not married. On October 17, 2022, the Department issued a Notice of Case Action, approving Petitioner for FAP benefits for herself and three children. (Exhibit A, pp. 216-226)
12. On or around May 20, 2023, Petitioner submitted an application requesting FIP benefits. Petitioner reported herself and her three children as members of the household. Petitioner also reported that she was currently pregnant and expecting one child on July 28, 2023. Petitioner participated in an application interview on June 1, 2023, during which Petitioner reported that she is married and separated from her spouse. Petitioner reported that she files a tax return and will claim her three children as tax dependents. On or around June 29, 2023, the Department issued a Notice of Case Action, approving Petitioner for FIP benefits. (Exhibit A, pp. 516-537)
13. On or around July 21, 2023, Petitioner submitted a redetermination for her FAP case, on which she reported her newborn son was in the household. On September 1, 2023, the Department issued a Notice of Case Action, approving Petitioner for FAP benefits for herself and her four children. (Exhibit A, pp. 338-349)
14. On or around January 22, 2024, Petitioner submitted a redetermination for her FAP case. On or around February 3, 2024, the Department issued a Notice of Case Action, approving Petitioner for FAP benefits for herself and her four children. (Exhibit A, pp. 372-)
15. The Department asserted that Petitioner and Chris Dale Spivey were married on or around August 16, 2019. (Exhibit A, p. 554)
16. The Department asserted that as of July 16, 2022, per the State of Michigan Department of State Secretary of State records, Chris Dale Spivey's address was 21162 Cyman, Warren, MI 48091, which is the same as Petitioner's address. (Exhibit A, pp. 555-560)
17. The Department asserted that Petitioner failed to report that she was married, that her spouse Chris Spivey lived in her home, and that she failed to report Mr. Spivey's earnings on the applications and redeterminations submitted to the Department.
18. The Department asserted that Petitioner received overissuances of FAP and FIP benefits.
19. On or around September 9, 2024, the Department sent Petitioner a Notice of Overissuance informing her that she received an agency error caused OI of FAP benefits in the amount of \$6,108, for the period of October 1, 2019, through

September 30, 2020, because the Department authorized Petitioner's receipt of continued FAP benefits without the proper documents, either a redetermination notice or FAP application. The October 2019 to September 2020 agency error FAP OI was assigned Claim ID # ending in 4032. (Exhibit A, pp. 20-29)

20. On or around September 9, 2024, the Department sent Petitioner a Notice of Overissuance informing her that she received a client error caused OI of FAP benefits in the amount of \$5,295, for the period of February 1, 2022, through August 31, 2022, because she failed to report that she was married, and her spouse's earnings at the time of redetermination, as well as a failure to report on earnings from Fiat/Chrysler. The February 2022 to August 2022 client error FAP OI was assigned Claim ID # ending in 4618. (Exhibit A, pp. 89-99)
21. On or around September 11, 2024, the Department sent Petitioner a Notice of Overissuance informing her that she received a client error caused OI of FAP benefits in the amount of \$5,908, for the period of December 1, 2022, through August 31, 2023, because she failed to report that she was married, and her spouse's earnings at the time of redetermination. The December 2022 to August 2023 client error FAP OI was assigned Claim ID # ending in 5256. (Exhibit A, pp. 165-174)
22. On or around September 11, 2024, the Department sent Petitioner a Notice of Overissuance informing her that she received a client error caused OI of FAP benefits in the amount of \$5,987, for the period of September 1, 2023, through April 30, 2024, because she failed to report that she was married, and her spouse's earnings at the time of redetermination. The September 2023 to April 2024 client error FAP OI was assigned Claim ID # ending in 5343. (Exhibit A, pp. 294-303)
23. On or around September 11, 2024, the Department sent Petitioner a Notice of Overissuance informing her that she received a client error caused OI of FIP benefits in the amount of [REDACTED] for the period of May 1, 2020, through March 31, 2021, because she failed to report that she was married, and her spouse's earnings at the time of her application. The May 2020 to March 2021 client error FIP OI was assigned Claim ID # ending in 5521. (Exhibit A, pp. 403-412)
24. On or around September 11, 2024, the Department sent Petitioner a Notice of Overissuance informing her that she received a client error caused OI of FIP benefits in the amount of [REDACTED] for the period of June 1, 2023, through August 31, 2023, because she failed to report that she was married, and her spouse's earnings at the time of her application. The June 2023 to August 2023 client error FIP OI was assigned Claim ID # ending in 5530. (Exhibit A, pp. 483-492)
25. On or around September 17, 2024, Petitioner requested a hearing disputing the Department's actions with respect to the six alleged OIs and Notices of Overissuance. (Exhibit A, pp.7-18)

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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 requested a hearing disputing the Department's determination that she was overissued FAP and FIP benefits that the Department is entitled to recoup. It was established that the Department issued six separate Notices of Overissuances to Petitioner, asserting that she was overissued FAP and FIP benefits due to both agency and client error.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2018), p. 1. A client error OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or inaccurate information to the Department. BAM 700, pp. 4-6. An agency error OI 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. BAM 700, pp. 4-6. The amount of the overissuance 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 2018), p. 6.

Agency Error OI

In this case, on September 9, 2024, the Department sent Petitioner a Notice of Overissuance informing her that she received an agency error caused OI of FAP benefits in the amount of \$6,108, for the period of October 1, 2019, through September 30, 2020, because the Department authorized Petitioner's receipt of continued FAP benefits without the proper documents, either a redetermination notice or FAP application. (Exhibit A, pp. 20-29).

The Department must periodically redetermine or renew an individual's eligibility for active programs. BAM 210 (April 2019), p. 1. If a FAP client does not begin the redetermination process, the Department will allow the benefit period to expire. The redetermination process begins when the client files a: MDHHS-1171 Assistance Application and MDHHS-1171 FAP, Supplement-Food assistance Program; DHS-1010 Redetermination; DHS-1171, Filing Form; or DHS-2063B, Food Assistance Benefits Redetermination Filing Record. BAM 210, pp. 3-4. A FAP client must also complete an interview. Before the Department proceeds with the FAP interview, it must receive the completed redetermination packet from the client. For FAP cases, benefits stop at the end of the benefit period unless a redetermination is completed, verifications received, and a new benefit period is certified. BAM 210, pp. 2-7. If the redetermination packet is not logged in by the last working day of the redetermination month, Bridges will automatically close the FAP case without sending a Notice of Case Action. BAM 210, p.14.

At the hearing, Mr. Brown, the Overpayment Establishment Analyst testified that Petitioner's FAP case was due for review and the Department sent Petitioner a redetermination that she was to complete and return to the Department by April 4, 2019. Mr. Brown testified that although Petitioner submitted an assistance application for the SER program on March 30, 2019, and subsequently participated in an SER application interview on April 2, 2019, Petitioner failed to return the FAP redetermination or any acceptable FAP assistance application/filing form prior to the end of the April 30, 2019, certification period, and thus, the Department should have closed Petitioner's FAP case effective May 1, 2019, due to a failure to return the redetermination. Mr. Brown testified that the Department should not have used the SER application in lieu of the FAP redetermination, as it was not an acceptable form per BAM 210. Mr. Brown testified that because the Department failed to timely close Petitioner's FAP case as a result of her failure to submit a redetermination, her household continued to receive FAP benefits that she was not eligible to receive. The Department alleged that Petitioner's household received \$6,108 in FAP benefits during the period between October 1, 2019, and September 30, 2020, and that the household was eligible for \$0 in FAP benefits during this period.

Petitioner disputed the Department's testimony and asserted that she participated in a FAP redetermination interview at the same time as her SER application interview. Petitioner credibly testified that while she was present at the local office in person for her SER application interview, the Department caseworker present filled out the FAP redetermination form for her at the same time as the SER application interview was being

conducted. Petitioner credibly testified that the person who interviewed her that day completed the FAP redetermination form by hand for her. There was no evidence presented by the Department to dispute Petitioner's testimony that a Department caseworker completed the redetermination form for Petitioner during the in person interview she participated in. A review of the April 10, 2019, Notice of Case Action supports Petitioner's testimony that her FAP benefits were being continued based on information she provided to the Department. Therefore, because the Department did not establish that Petitioner's FAP case should have closed effective May 1, 2019, due to a failure to complete a redetermination, and because the Department did not present any evidence that Petitioner was otherwise ineligible to receive FAP benefits from October 2019 to September 2020, the Department failed to show that Petitioner received an agency error overissuance of FAP benefits in the amount of \$6,108. Thus, the Department is not entitled to recoupment.

Client Error OIs

The Department sent Petitioner Notices of Overissuance informing her that it determined she had:

- A \$5,295 client error FAP OI from February 2022 to August 2022 for Claim ID # ending in 4618
- A \$5,908 client error FAP OI from December 2022 to August 2023 for Claim ID # ending in 5256
- A \$5,987 client error FAP OI from September 2023 to April 2024 for Claim ID # ending in 5343
- A [REDACTED] client error FIP OI from May 2020 to March 2021 for Claim ID # ending in 5521 and
- A [REDACTED] client error FIP OI from June 2023 to August 2023 for Claim ID # ending in 5530.

Spouses who are legally married and live together must be in the same group for FAP purposes. Parents and their children under 22 years of age who live together must be in the same group. Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share only an access area such as an entrance or hallway or non-living area such as a laundry room are not considered living together. BEM 212 (January 2022), pp. 1-3. For FIP eligibility, dependent children and their legal parents who live together are mandatory members of the FIP eligibility determination group (EDG) group. Living together for FIP purposes means sharing a home where family members usually sleep, except for temporary absences. BEM 210 (July 2021), pp. 1-5. Additionally, clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes in marital status and household composition must be reported to the Department within ten days after the client is aware of them. Changes such as starting or

stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (October 2021), pp. 9-12; 7 CFR 273.12(a)(1); 7 CFR 273.21.

The Department asserted that Petitioner and Chris Dale Spivey were married on or around August 16, 2019, and although at some point, Petitioner changed her last name to include Spivey, Petitioner did not report her marriage to the Department. The Department also alleged that as of July 16, 2022, per the State of Michigan Department of State Secretary of State records, Chris Dale Spivey's address was 21162 Cyman, Warren, MI 48091, which is the same as Petitioner's address. (Exhibit A, pp. 554-560).

At the hearing, Mr. Brown testified that Petitioner failed to report to the Department that she was married, that her spouse Chris Spivey lived in her home, and that she failed to report Mr. Spivey's earnings on the FIP applications and FAP redeterminations she submitted to the Department. The Department argued that Mr. Spivey is a mandatory member of Petitioner's household for FAP and FIP purposes pursuant to the policies found in BEM 210 and BEM 212, and thus, his income should have been included in the FIP and FAP eligibility determination. The Department argued that after including Mr. Spivey in Petitioner's household and including his unreported income in the FIP/FAP eligibility determination, Petitioner's household was ineligible for FIP and FAP benefits for the months outlined in the OI Summaries.

During the hearing, the Department conceded that there was no evidence to support its determination that Petitioner's husband Chris Spivey lived in her home prior to July 16, 2022. Thus, the Department conceded that there was no evidence to support the calculation of the February 2022 to August 2022 client error FAP OI of \$5,295 for Claim ID # ending in 4618 or the May 2020 to March 2021 client error FIP OI of [REDACTED] for Claim ID # ending in 5521. The Department acknowledged that both alleged OIs should be deleted as the Department did not establish it was entitled to recoupment.

With respect to the remaining client error OIs, Petitioner disputed the Department's testimony that she failed to report to the Department that she was married and denied that Mr. Spivey lived in her home during the OI periods. Petitioner argued that on the applications and redetermination forms she submitted, she accurately reported to the Department that she was separated from Mr. Spivey. Petitioner's testimony was supported by the documents presented for review in Exhibit A, which show that on more than one occasion, Petitioner reported that her marital status was separated. Petitioner testified that although she and Mr. Spivey were married in August 2019, they each maintained their own houses. Petitioner testified that they separated in 2020, and each had their own relationships with other people. Petitioner testified that Mr. Spivey did not move into her home and changed his address for mail purposes only, as mail was often stolen from the home he lived in with his mother. Petitioner testified that during prior hearings and on multiple occasions, she provided the Department with verification of Mr. Spivey's lease at his home.

Upon review, the Department presented no evidence other than a change of address in support of its position that Mr. Spivey lived in Petitioner's home beginning July 2022.

Without any additional supporting evidence, a mailing address alone is insufficient to show that Petitioner and Mr. Spivey shared a home and common living quarters together as required by the Department policy referenced above. Because the Department failed to establish that Petitioner and Mr. Spivey lived together, the Department failed to establish that he was a mandatory member of Petitioner's FAP and FIP groups. Therefore, Petitioner was not required to report Mr. Spivey's income to the Department. Because Mr. Spivey's income was not countable for purposes of Petitioner's FIP and FAP eligibility, the Department failed to establish that Petitioner was ineligible to receive FIP and FAP benefits during the OI periods.

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 determined that Petitioner received:

- A \$6,108 agency error FAP OI from October 2019 to September 2020 for Claim ID # ending in 4032
- A \$5,295 client error FAP OI from February 2022 to August 2022 for Claim ID # ending in 4618
- A \$5,908 client error FAP OI from December 2022 to August 2023 for Claim ID # ending in 5256
- A \$5,987 client error FAP OI from September 2023 to April 2024 for Claim ID # ending in 5343
- A [REDACTED] client error FIP OI from May 2020 to March 2021 for Claim ID # ending in 5521 and
- A [REDACTED] client error FIP OI from June 2023 to August 2023 for Claim ID # ending in 5530.

As such, the Department is not entitled to recoupment.


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. Delete the following agency and client error OIs and cease any recoupment and/or collection action:
 - The \$6,108 agency error FAP OI from October 2019 to September 2020 for Claim ID # ending in 4032
 - The \$5,295 client error FAP OI from February 2022 to August 2022 for Claim ID # ending in 4618
 - The \$5,908 client error FAP OI from December 2022 to August 2023 for Claim ID # ending in 5256
 - The \$5,987 client error FAP OI from September 2023 to April 2024 for Claim ID # ending in 5343
 - The [REDACTED] client error FIP OI from May 2020 to March 2021 for Claim ID # ending in 5521 and
 - The [REDACTED] client error FIP OI from June 2023 to August 2023 for Claim ID # ending in 5530.

ZB/ml


Zainab A. Baydoun
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

Eugene Brown
Overpayment Establishment Section (OES)
235 S Grand Ave, Ste 811
Lansing, MI 48909
MDHHS-RECOUPMENT-HEARINGS@Michigan.gov

DHHS

Chelsea McCune
Macomb County DHHS Warren Dist.
13041 E 10 Mile
Warren, MI 48089
MDHHS-Macomb-20-Hearings@michigan.gov

Interested Parties

BSC4
M. Holden
B Cabanaw
N Denson-Sogbaka
MOAHR

Via First Class Mail:

Petitioner

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