



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

[REDACTED]  
[REDACTED]  
MI [REDACTED]

Date Mailed: November 15, 2024  
MOAHR Docket No.: 24-011603  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 November 6, 2024, via teleconference. Petitioner appeared and represented herself. Eugene Brown, Overpayments Establishment Analyst, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department). MDHHS' Hearing Packet was admitted into evidence at the hearing as MDHHS Exhibit A, pp. 1-61.

### **ISSUE**

Did MDHHS properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits due to an agency 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. Petitioner was an ongoing recipient of FAP benefits.
2. On August 30, 2024, a decision (Hearing Decision) was issued by Administrative Law Judge Jeffrey Kemm in Case No. 24-008615 (Exhibit A, p. 53). The Hearing Decision reversed the Department's determination that Petitioner was overissued FAP benefits in the amount of \$1,804.00 from November 2020 to June 2021 (Exhibit A, p. 53). The Hearing Decision ordered MDHHS to redetermine the OI amount (Exhibit A, p. 58).
3. On September 10, 2024, MDHHS sent Petitioner a Notice of Overissuance indicating that Petitioner was overissued FAP benefits in the amount of \$1,391.00

during the period of December 1, 2020 to June 30, 2021 (OI Period) (Exhibit A, p. 7). The notice stated that the OI was due to agency error because MDHHS did not properly process a new hire notice (Exhibit A, p. 47).

4. On September 20, 2024, Petitioner requested a hearing regarding the alleged FAP OI (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. MDHHS 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, MDHHS determined that Petitioner received an OI of FAP benefits due to an agency error because it failed to properly act upon income information from a new hire notice. 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 705 (October 2018), p. 6. An OI can be caused by client error, agency error, or an intentional program violation. 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.

MDHHS alleged that the FAP OI was caused by its failure to act on a new hire notice dated October 5, 2024 concerning Petitioner's income. MDHHS alleged that its inaction led to an OI of FAP benefits for the months of December 2020, and February 2021 through June 2021 (Exhibit A, p. 8). During this time, Petitioner received \$1,391.00 in FAP benefits that she was not entitled to receive. This amount excludes the 15% benefit increase related to COVID-19 policies that is not recoupable.

Due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size would receive a supplement to bring their benefit amount to the maximum for their group size. ESA Memo 2020-15 (March 2020; updated December 2020). The State of Michigan issued EA from April 2020 to February 2023. ESA Memo 2023-10 (February 2023). In addition,

beginning in May 2021, MDHHS began issuing a minimum \$95 supplement to all FAP households, including households that were already receiving the maximum allotment for their household size. ESA Memo 2021-22 (May 2021). Wrongfully-issued EA are recoupable by MDHHS if the FAP household is not eligible for any FAP benefits during the month at issue.

From January 1, 2021 to September 30, 2021, FAP recipients became eligible for a 15% benefit increase in addition to their monthly allotment and the EA, pursuant to the 2021 Consolidated Appropriations Act, P.L. 116-260 (Appropriations Act), and extended by the American Rescue Plan, P.L. 117-2. Under Section 702(b)(4) of the Appropriations Act, the 15% benefit increase is not subject to recoupment. When requesting recoupment of FAP benefits from January 1, 2021 to September 30, 2021, MDHHS is required to explain how it calculated the OI amount, less the 15% benefit increase.<sup>1</sup>

MDHHS presented OI Budgets, which recalculated Petitioner's FAP eligibility for the months at issue (Exhibit A, pp. 21-32). MDHHS added Petitioner's income from Ground Effects LLC (Employer) to the budgets and determined that Petitioner was not eligible for any FAP benefits during those months due to excess income. Because Petitioner was not eligible for any FAP benefits during those months, MDHHS properly determined that it could recoup the ongoing benefit amount and the EA, which equaled \$1,391.00.

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 OI of FAP benefits in the amount of \$1,391.00 based on agency error.

### **DECISION AND ORDER**

Accordingly, MDHHS' decision is **AFFIRMED**.

LJ/pt

  
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**Linda Jordan**  
Administrative Law Judge

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<sup>1</sup> See United States Department of Agriculture, *Supplemental Nutrition Assistance Program (SNAP), Consolidated Appropriations Act, 2021 – Questions and Answers* (February 19, 2021), available at <<https://www.fns.usda.gov/snap/provisions-consolidated-appropriations-act-2021>> (accessed November 15, 2024).

**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**

Janice Collins  
Genesee County DHHS Union St District Office  
125 E. Union St 7th Floor  
Flint, MI 48502  
**MDHHS-Genesee-UnionSt-Hearings@michigan.gov**

**Interested Parties**

BSC2  
M Holden  
B Cabanaw  
N Denson-Sogbaka  
MOAHR

**Via-First Class Mail:**

**Petitioner**

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