



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 22, 2024
MOAHR Docket No.: 24-011845
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 13, 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. 1-139.

ISSUES

1. Did MDHHS properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits based on agency error?
2. Did MDHHS properly determine that Petitioner received OIs of FAP benefits based on client 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 [REDACTED], 2020, Petitioner submitted an application for FAP, reporting no earned income (Exhibit A, p. 135).
3. On December 16, 2020, MDHHS sent Petitioner a New Hire Client Notice requesting to verify income information from [REDACTED] (Employer 1), by December 28, 2020 (Exhibit A, p. 74).

4. On January 30, 2021, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits beginning March 1, 2021 (Exhibit A, p. 65). The FAP benefit rate was based on no earned income (Exhibit A, p. 66). The notice included language stating FAP beneficiaries have a responsibility to report changes that may affect eligibility within ten days (Exhibit A, p. 69).
5. On [REDACTED] 2022, Petitioner submitted an application for FAP, reporting earned income (Exhibit A, pp. 122-127)
6. On [REDACTED] 2023, Petitioner submitted a Semi-Annual Contact Report to MDHHS, reporting that the household income of \$[REDACTED]0 had not changed by more than \$125.00 (Exhibit A, p. 119-)
7. On April 24, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits beginning May 1, 2023 (Exhibit A, p. 83). The FAP benefit rate was based on \$[REDACTED] in earned income (Exhibit A, p. 84). The notice included language stating that Petitioner's household was in the Simplified Reporting (SR) category and that she was only required to report changes if the group's gross monthly income exceeded the income limit of \$2,495.00 (Exhibit A, p. 84).
8. On July 8, 2024, MDHHS sent Petitioner a Notice of Overissuance, indicating that she received more FAP benefits than she was eligible to receive from January 1, 2021 to April 30, 2021 (Exhibit A, p. 8). The Notice indicated that the OI was due to agency error because MDHHS failed to include employment income in the FAP benefit calculation (Exhibit A, p. 8). The notice stated that the amount of the OI was \$1,140.00 (Exhibit A, p. 8).
9. On July 8, 2024, MDHHS sent Petitioner a Notice of Overissuance, indicating that she received more FAP benefits than she was eligible to receive from September 1, 2022 to September 30, 2022 (Exhibit A, p. 28). The Notice indicated that the OI was due to client error because the household income exceeded the income limit (Exhibit A, p. 28). The notice stated that the amount of the OI was \$658.00 (Exhibit A, p. 28).
10. On July 8, 2024, MDHHS sent Petitioner a Notice of Overissuance, indicating that she received more FAP benefits than she was eligible to receive from March 1, 2023 to November 30, 2023 (Exhibit A, p. 38). The Notice indicated that the OI was due to client error because the household income exceeded the Simplified Reporting (SR) limit (Exhibit A, p. 38). The notice stated that the amount of the OI was \$1,333.00 (Exhibit A, p. 38).
11. On October 16, 2024, Petitioner filed a Request for Hearing to dispute MDHHS' determinations regarding the alleged OIs (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 OIs of FAP benefits based on agency error and client error. MDHHS alleged that Petitioner received an OI of FAP benefits based on agency error, because the agency failed to act on a new hire notice concerning income at Employer 1. Additionally, MDHHS alleged that Petitioner received OIs based on client error for failing to properly report exceeding the Simplified Reporting (SR) limit on two separate occasions.

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 715 (October 2017), p. 6. An OI can be caused by client error, agency error, or an intentional program violation (IPV). 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.

Regarding the agency error, MDHHS determined that Petitioner received an OI of FAP benefits from January 1, 2021 to April 30, 2021 because it failed to act on a new hire notice and failed to properly budget employment income from Employer 1. MDHHS alleged that the OI amount for that period \$1,140.00. The record shows that MDHHS sent Petitioner a New Hire Client Notice on December 16, 2020 (Exhibit A, p. 74). MDHHS alleged that although this notice was not returned by the deadline, it failed to take action, and no income was budgeted for Petitioner. It is undisputed that MDHHS failed to process the New Hire Notice, resulting in an OI based on agency error. MDHHS is required to pursue OIs even when caused by its own actions or inaction. MDHHS alleged that the failure to properly act on the New Hire Notice led to an OI of FAP benefits in January 2021 and April 2021. MDHHS introduced OI Budgets which recalculated Petitioner's FAP benefit rate during these months (Exhibit A, pp. 18-20). Due to the employment income, Petitioner was not eligible for any FAP benefits during the months in question. She received \$1,140.00 in ongoing FAP benefits in January and

April 2021, excluding the 15% benefit increase related to COVID-19 policies (Exhibit A, p. 14).¹ Because she was not eligible for any benefits during this time, MDHHS properly concluded that she received an OI of \$1,140.00 based on agency error.

Regarding the alleged FAP OIs based on client error, MDHHS determined that Petitioner caused the OIs because she failed to report exceeding the SR limit for the household.

Petitioner's FAP group was in the SR category. Food assistance groups with countable earnings are assigned to the SR category. BAM 200 (January 2021), p. 1. SR groups are required to report only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. *Id.* No other change reporting is required. *Id.* If the group has an increase in income, the group must determine their total gross income at the end of that month. *Id.* If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. *Id.* Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. *Id.*

Regarding the OI in September 2022, MDHHS alleged that Petitioner exceeded the SR limit in July 2022, which led to an OI of FAP benefits. However, it is unclear from the record when MDHHS determined that Petitioner's FAP group was in the SR category and whether MDHHS properly informed Petitioner of her responsibilities as a Simplified Reporter. MDHHS did not introduce a notice of case action prior to July 2022 that includes the language regarding SR responsibilities. Thus, it is unclear whether MDHHS properly informed Petitioner of her reporting responsibilities. The failure to properly notify Petitioner of her responsibilities as FAP group in the SR category constitutes an agency error, rather than a client error. Therefore, MDHHS has failed to properly demonstrate that the OI in September 2022 was based on client error, rather than agency error.

Regarding the OI of \$1,333.00 from March 1, 2023 to November 30, 2023, MDHHS alleged that Petitioner failed to report exceeding the SR limit, which led to an OI of FAP benefits. The record shows that MDHHS informed Petitioner of her responsibilities as a FAP group in the SR category on April 24, 2023 (Exhibit A, p. 83). The Notice of Case Action sent on April 24, 2023 instructed Petitioner to report if the household's income exceeded the SR limit of \$2,495.00 (Exhibit A, p. 84). However, MDHHS alleged that the group exceeded this limit prior to sending the Notice of Case Action. MDHHS alleged that Respondent exceeded the SR limit in January 2023. Additionally, the Notice

¹ 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.

of Case Action shows that MDHHS budgeted \$3,053.00 for Petitioner's earned income (Exhibit A, p. 84), meaning that Petitioner exceeded the SR limit at the time the notice was issued and that MDHHS has knowledge of Petitioner's earnings. It is unclear why MDHHS did not attempt to verify the excess income at that time and it is also unclear whether MDHHS properly informed Petitioner of her responsibilities as a SR prior to exceeding the SR limit in January 2023. Therefore, it is unclear whether the OI was caused by client error or agency error, and MDHHS has failed to satisfy its burden.

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 MDHHS acted in accordance with Department policy when it determined that Petitioner received an OI of FAP benefits based on agency error.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner received OIs of FAP benefits based on client error.

DECISION AND ORDER

Accordingly, MDHHS' decision is **AFFIRMED IN PART** with respect to the FAP OI of \$1,140.00 from January 1, 2021 to April 30, 2021 based on agency error.

MDHHS' decision is **REVERSED IN PART** with respect to the FAP OI of \$658.00 from September 1, 2022 to September 30, 2022 based on client error, and with respect to the FAP OI of 1,333.00 from March 1, 2023 to November 30, 2023 based on client error. **IT IS ORDERED** that MDHHS delete the FAP OIs based on client error in their entirety and cease any recoupment/collection action.

LJ/pt



Linda Jordan
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

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
MDHHS Recoupment
MOAHR

Via-First Class Mail:

Petitioner

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