



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]  
[REDACTED], MI [REDACTED]

Date Mailed: January 17, 2025  
MOAHR Docket No.: 24-013359  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner**

### **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 by telephone on January 8, 2025. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Julie Barr, Overpayment Establishment Analyst.

### **ISSUE**

Did the Department properly determine that Petitioner receive an overpayment (OP) of Food Assistance Program (FAP) benefits in the amount of \$419 on February 13, 2024, for the benefit month of May 2023, due to agency error (AE)?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all times relevant to the instant issue, Petitioner was an ongoing recipient of FAP for himself and his minor son, [REDACTED] (Son). (Exhibit A, pp. 14, 20 – 21).
2. From November 1, 2022 through October 31, 2023, Petitioner was approved for FAP benefits of \$419 per month for a two-person FAP group. (Exhibit A, p. 14).
3. From at least May 1, 2023 through September 30, 2023, Petitioner received \$419 per month in ongoing FAP benefits, issued to Petitioner by the Department on the 5<sup>th</sup> of each respective benefit month. (Exhibit A, p. 20).

4. On September 8, 2023, the Department issued Petitioner a FAP supplement of \$62. The Department attributed the supplement to the May 2023 benefit month. (Exhibit A, p. 20).
5. On October 5, 2023, the Department issued Petitioner \$220 for ongoing FAP benefits for October 2023. (Exhibit A, p. 20).
6. On November 5, 2023, the Department issued Petitioner \$462 for ongoing FAP benefits for November 2023. (Exhibit A, p. 21).
7. On December 5, 2023, the Department issued Petitioner \$388 for ongoing FAP benefits for December 2023. (Exhibit A, p. 21).
8. On January 5, 2024, the Department issued Petitioner \$367 for ongoing FAP benefits for January 2024. (Exhibit A, p. 21).
9. On February 5, 2024, the Department issued Petitioner \$419 for ongoing FAP benefits for February 2024. (Exhibit A, p. 21).
10. On February 13, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) that approved Petitioner for a decreased FAP benefit of \$406 per month effective March 1, 2024. (Exhibit B, pp. 1 – 2).
11. On February 13, 2024, the Department issued Petitioner a FAP supplement of \$419. The Department attributed the supplement to the May 2023 benefit month. (Exhibit A, p. 20).
12. On November 14, 2024, the Department sent Petitioner a Notice of Overissuance (OP) due to agency error in the amount of \$419. The Notice of OP stated that the OP occurred when it issued the FAP supplement of \$419 to Petitioner on February 13, 2024. (Exhibit A, pp. 28 – 33).
13. On November 27, 2024, the Department received a request for hearing from Petitioner disputing that he received an OP and asserting that the FAP supplement was issued to correct FAP underissuances in the several months prior to February 13, 2024. (Exhibit A, p. 8).

### **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.

Petitioner requested a hearing to dispute that he received an OP of \$419 on February 13, 2024, and asserted that the Department issued a FAP supplement to correct underissuances for several benefit months prior to February 13, 2024. The Department issued a Notice of OP to Petitioner to recoup \$419 issued to Petitioner on February 13, 2024 that the Department alleges was issued in error.

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OP. BAM 700 (June 2024), p. 1; 7 CFR 273.18(a)(2). The amount of a FAP OP is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 705 (June 2024), p. 6; 7 CFR 273.18(c)(1). An OP can be caused by client error, AE, or an intentional program violation (IPV). BAM 700, pp. 5 – 9. An AE is caused by incorrect actions by the Department, including system generated supplements that were issued in error. BAM 700, p. 2; BAM 705, pp. 1 – 2; 7 CFR 273.18(b)(3). When an OP in excess of \$250 is due to AE and occurred within the 12 months prior to being discovered, the Department is required to establish a claim for repayment for the OP. BAM 700, p. 5; BAM 705, p. 7; 7 CFR 273.18(d)(3). The Department has the burden of establishing that the actions taken were in accordance with policy. See generally BAM 600, p. 37.

In this case, there was no dispute that the Department issued a \$419 FAP supplement to Petitioner on February 13, 2024 and that Petitioner received it. However, Petitioner testified, and the evidence established, that he had not received his full FAP benefit amount for several months prior to the February FAP supplement, that there were no changes in his household, and he believed the supplement was issued to make up for underissued benefits. Additionally, the Department could not clearly explain why Petitioner's ongoing benefits were different each month from October 1, 2023 through February 29, 2024, and the evidence established that prior to March 1, 2024, Petitioner's ongoing FAP benefits were more than \$406 per month. (Exhibit B, p. 1).

The Department explained that it received information that there were 288 Department cases in which supplements were issued in error due to a system or computer error. However, there was no evidence a) in support of the Department's testimony that a computer or system error occurred, such as a memo or other correspondence, or b) that the supplement issued to Petitioner in this case was issued in error, or c) that the supplement was correctly attributable to the May 2023 benefit period. Specifically, the Department could not explain why a FAP supplement was issued to Petitioner on September 8, 2023 that was also attributed to the May 2023 benefit period, or how that supplement was different than the supplement issued to Petitioner on February 13, 2024.

Based on the totality of the foregoing, the Department did not establish that Petitioner received an OP of FAP due to AE in the amount of \$419 for the period of May 1, 2023 through May 31, 2023. Therefore, the Department may not recoup a \$419 FAP OP from Petitioner.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner received an OP of \$419 on February 13, 2024 due to AE.

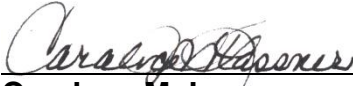
### **DECISION AND ORDER**

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 \$419 OP in Petitioner's case for the period of May 1, 2023 to May 31, 2023 in its entirety and cease any recoupment/collection action as to that period and amount; and
2. Notify Petitioner of its decision in writing.

CML/nr

  
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**Caralyce M. Lassner**  
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**

Julie Barr

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**Interested Parties**

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**Petitioner**

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