



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

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Date Mailed: January 31, 2025
MOAHR Docket No.: 24-014004
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 on January 22, 2025, from Lansing, Michigan. ██████████, Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by LaRhonda Ellis, Overpayment Establishment Analyst (OEA).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-46.

ISSUE

Did the Department properly determine that Petitioner received Food Assistance Program (FAP) benefits that she was not eligible for and must be recouped?

FINDINGS OF FACT

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

1. From May 1, 2023 to August 31, 2023 Petitioner received FAP benefits subject to recoupment totaling \$1,952.00. (Exhibit A, p. 16)
2. On September 2, 2022, a Notice of Case Action was issued to Petitioner approving FAP for a household size of four. A budget summary was included showing earned income of \$2,668.00 was included in the FAP budget. The Notice indicated Petitioner was a simplified reporter and was only required to report lottery or gambling winnings over a specified amount and when household gross monthly income exceeded \$2,871.00. A change in income over this amount was to be reported by the 10th day of the following month (Exhibit A, pp. 38-39)

3. On [REDACTED] 2023, Petitioner submitted a Renew Benefits form. Petitioner reported that her employment changed from [REDACTED] ending [REDACTED] 2023 to [REDACTED] starting [REDACTED] 2023. Petitioner reported that she was working 40 hours per week, \$[REDACTED] per hour. Petitioner also reported changes with rent and utilities. (Exhibit A, pp. 42-45)
4. On [REDACTED], 2023 an interview was completed with Petitioner for a Redetermination. Petitioner reported she started employment with [REDACTED] on [REDACTED] 2023, working 40 hours per week, \$[REDACTED] per hour. Petitioner agreed that the paystubs she sent in were an accurate reflection of her pay. Petitioner's prior employment at [REDACTED] ended [REDACTED] 2023. [REDACTED] human resources confirmed Petitioner's employment ended. (Exhibit A, pp. 30-36)
5. A report from The Work Number documented Petitioner's income from employment with [REDACTED]. Petitioner's employment started [REDACTED], 2023 and her first pay date was [REDACTED], 2023. (Exhibit A, pp. 26-29)
6. Petitioner's household's gross monthly income began exceeding the simplified reporting limit as of March 2023. (Exhibit A, p. 37; OEA Testimony)
7. The Department determined that Petitioner was overissued FAP benefits from May 1, 2023 to August 31, 2023 in the amount of \$1,952.00 due to client error of failing to report new employment income from [REDACTED] (Exhibit A, pp. 17-25)
8. On December 13, 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$1,952.00 overissuance of FAP benefits occurred from May 1, 2023 to August 31, 2023 due to client error and would be recouped. (Exhibit A, pp. 9-14)
9. On December 16, 2024, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 4-6)

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.

Department policy requires clients to completely and truthfully answer all questions on forms and in interview. BAM 105 (April 1, 2022) p. 9. Generally, clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. BAM 105, pp. 11-13. However, the change reporting requirements are different for FAP simplified reporters. FAP simplified reporting households must report when the household monthly income exceeds the monthly gross income limit for its household size. 7 CFR 273.12(a)(5)(ii)(G)(1) Further, periodic reports are to be submitted on which it is requested that the household report any changes in circumstances. 7 CFR 273.12(a)(5)(iii). Similarly, Department policy regarding change reporting for FAP simplified reporting household indicates that simplified reporting groups are required to report only when the group's actual gross monthly income (not converted) exceeds the Simplified Reporting (SR) income limit for their group size. If the group has an increase in income, the group must determine their total gross income at the end of that month. 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. 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. BAM 200, October 1, 2022, p. 1. Groups meeting the simplified reporting category at application and redetermination are assigned a 12-month benefit period and are required to have a semi-annual contact. BAM 200, p. 3.

For FAP, the Department will act on a change reported by means other than a tape match within 10 days of becoming aware of the change. A change report by tape match is to be acted upon within 15 workdays. BAM 220, October 1, 2022, p. 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p. 13.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overpayment. BAM 700, June 1, 2024, p. 1. An agency error is a type of overpayment or underissuance resulting from an incorrect action or failure to take action by the state agency. A client error is a type of overpayment or underissuance resulting from inaccurate reporting on the part of the household. BAM 700, p. 5. Agency and client errors are not pursued if the OP amount is equal to or less than \$250 per program. BAM 700 p. 5.

The Department determined that Petitioner was overissued FAP benefits from May 1, 2023 to August 31, 2023 in the amount of \$1,952.00 due to client error of failing to report new employment income from [REDACTED]. (Exhibit A, pp. 17-25). However, because Petitioner was a simplified reporter, the client error was actually failing to report when income exceeded the Simplified Reporting limit.

On December 13, 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$1,952.00 overissuance of FAP benefits occurred from May 1, 2023 to August 31, 2023 due to client error and would be recouped. (Exhibit A, pp. 9-14).

On September 2, 2022, a Notice of Case Action was issued to Petitioner approving FAP for a household size of four. A budget summary was included showing earned income of \$[REDACTED] was included in the FAP budget. The Notice indicated Petitioner was a simplified reporter and was only required to report lottery or gambling winnings over a specified amount and when household gross monthly income exceeded \$2,871.00. A change in income over this amount was to be reported by the 10th day of the following month (Exhibit A, pp. 38-39).

On July 7, 2023, Petitioner submitted a Renew Benefits form. Petitioner reported that her employment changed from [REDACTED] ending [REDACTED], 2023 to [REDACTED] starting [REDACTED], 2023. Petitioner reported that she was working 40 hours per week, \$[REDACTED] per hour. Petitioner also reported changes with rent and utilities. (Exhibit A, pp. 42-45). On August 7, 2023 an interview was completed with Petitioner for a Redetermination. Petitioner reported she started employment with [REDACTED] on [REDACTED], 2023, working 40 hours per week, \$[REDACTED] per hour. Petitioner agreed that the paystubs she sent in were an accurate reflection of her pay. Petitioner's prior employment at [REDACTED] ended [REDACTED], 2023. [REDACTED] human resources confirmed Petitioner's employment ended. (Exhibit A, pp. 30-36). A report from The Work Number documented Petitioner's income from employment with [REDACTED]. Petitioner's employment started [REDACTED] 2023 and her first pay date was [REDACTED], 2023. (Exhibit A, pp. 26-29).

Petitioner's household's gross monthly income began exceeding the simplified reporting limit as of March 2023. (Exhibit A, p. 37; OEA Testimony). Accordingly, Petitioner should have reported by April 10, 2023 that the household income exceeded the simplified reporting limit. Allowing time for the Department to act on the change that should have been reported, the client error overpayment began in May 2020.

Petitioner acknowledged that she did not report the change with her income within the time requirement. However, Petitioner noted that there appear to be errors in how the overpayment was calculated, including the amount of FAP benefits Petitioner received and whether shelter expenses were included. (Petitioner Testimony).

The September 2, 2022 Notice of Case Action included in the Department's exhibit packet states Petitioner was approved for a FAP monthly benefit in the amount of \$361.00 for the period of September 1, 2022 to August 31, 2023. (Exhibit A, pp. 38-39). However, the issuance summary shows that the FAP benefit amount Petitioner received was \$488.00 from April 1, 2023 to September 30, 2023. (Exhibit A, p. 16). The OEA reviewed the case record and found that on February 23, 2023 a Notice of Case Action was issued to Petitioner stating the monthly FAP benefit increased to \$488.00 effective March 1, 2023. (OEA Testimony).

The May 2023 budget shows that no heat/utility (h/u) expenses were included in that FAP budget. The full h/u standard was included in the remaining budgets used to determine the overissuance. (Exhibit A, pp. 18-25). It is unknown why no h/u expense was included in the May 2023 budget.

Additionally, the August 2023 budget shows that Petitioner's income was still considered as unreported earned income (i.e. she was not allowed the 20% earned

income deduction) and there was no change with her rent expense. (Exhibit A, p. 24). However, on the July 7, 2023 Renew Benefits form Petitioner reported the change with her employment income and that her rent had increased to \$[REDACTED]. (Exhibit A, pp. 42-45). Petitioner also noted that it is actually a mortgage payment, not rent. (Petitioner Testimony). The type of housing expense would not affect the overissuance calculation, but the amount of the housing expense could affect the overissuance calculation.

The above cited BAM 700 policy requires the Department to recoup the overpayment when a client group receives more benefits than it is entitled to receive. This includes overpayments caused by client or agency errors when the amount is at least \$250 per program.

Overall, the evidence supports the Department's determination that Petitioner received an overpayment of FAP benefits starting in May 2023 because Petitioner's household income began exceeding the simplified reporting limit in March 2023 and this was not reported by April 10, 2023. However, it appears that there are some errors in the FAP budgets that could affect the overissuance calculation. Therefore, the Department's determination to seek recoupment of a \$1,952.00 client error overpayment of FAP benefits from Petitioner cannot be upheld at this time. The overissuance budgets for May 2023 through August 2023 should be recalculated.

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 that Petitioner received the \$1,952.00 overpayment of FAP benefits from May 1, 2023 to August 31, 2023 due to client error, which must be recouped.

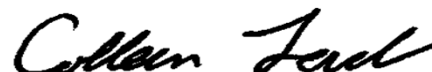
DECISION AND ORDER

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. Redetermine the FAP overpayment amount for the period of May 2023 through August 2023 in accordance with Department policy.

CL/pt



Colleen Lack

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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Interested Parties

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Via-First Class Mail:

Petitioner

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