

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-021644
Issue No.: 3007
Agency Case No.: [REDACTED]
Hearing Date: January 13, 2016
County: Macomb (12)

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; 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 13, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], recoupment specialist, and [REDACTED], hearing facilitator.

ISSUE

The issue is whether MDHHS established a basis for recoupment of Food Assistance Program (FAP) benefits.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On May 13, 2015, MDHHS mailed a Notice of Overissuance to Petitioner alleging Petitioner received an overissuance of [REDACTED] of FAP benefits over the months from August 2014 through November 2014.
2. On an unspecified date in July 2015, Petitioner requested a hearing to dispute the OI.
3. On November 17, 2015, Petitioner again requested a hearing to dispute the OI.

CONCLUSIONS OF LAW

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

(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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a recoupment of FAP benefits. Before a substantive analysis of the recoupment may be undertaken, two procedural obstacles must be considered. A background of the procedural history is necessary to fully understand the obstacles.

On March 3, 2015, MDHHS sent to Petitioner notice of a recoupment of ██████████ in FAP benefits. The alleged overissuance allegedly occurred from August 2014 through November 2014. The overissuance was based on estimates of Petitioner's wages from the overissuance period. Petitioner timely requested a hearing to dispute the recoupment.

Before the hearing date, MDHHS received more reliable information of Petitioner's allegedly unbudgeted wages from the overissuance period. MDHHS testimony indicated the overissuance amount was updated to \$ ██████████ and notice was sent to Petitioner on May 13, 2015.

On May 27, 2015, Petitioner got her hearing. The corresponding hearing decision was presented (Exhibit 1, pp. 3-7). The presiding administrative law judge stated that there was no jurisdiction over the recoupment action related to the May 13, 2015 notice because the notice was sent after Petitioner's hearing request. The presiding ALJ also found "...the Department did not establish a FAP benefit OI to Respondent totaling ██████████" (see Exhibit 1, p. 5). The administrative law judge "reversed" the MDHHS action and ordered MDHHS to "delete the ██████████ FAP OI and cease any recoupment action" (see Exhibit 1, p. 6).

The first procedural concern is res judicata. Res judicata is a legal concept which prohibits the reopening of an already decided dispute. Petitioner's testimony suggested she thought the earlier issued hearing decision barred MDHHS from reopening the alleged overissuance. Generally, MDHHS is barred from pursuing an OI for the same period across multiple hearings.

If it was thought that MDHHS was trying to be cunning or deceitful, it would be found that MDHHS was barred from pursuing a second hearing for an overissuance against Petitioner. The present case tends to support that MDHHS was not acting deceitfully. One consideration is that MDHHS voluntarily lowered the alleged OI amount. MDHHS testimony credibly indicated the OI was lowered after Petitioner's former employer provided more accurate wage information from the OI period. Secondly, the previous ALJ made clear that MDHHS was not barred from pursuing the OI amount after the hearing. The ALJ noted Petitioner was "entitled to request a new hearing" concerning the updated OI determination made on May 13, 2015. Thus, it cannot be stated that

Petitioner was unaware of the need to request another hearing to dispute the updated OI amount.

It would have been preferable had the previous OI been dismissed by the ALJ instead of reversed; nevertheless the intent of the ALJ was clear. It is found MDHHS is not barred from pursuing an OI against Petitioner due to *res judicata*.

A second procedural obstacle is whether Petitioner timely requested a hearing. The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (1/2015), p. 6. The request must be received in the local office within the 90 days. *Id.*

It was not disputed that MDHHS received a hearing request from Petitioner on November 17, 2015. If Petitioner did not request a hearing earlier, Petitioner's hearing request would have been untimely in disputing the MDHHS written notice dated May 13, 2015.

Petitioner testimony contended she first requested a hearing on an unknown date in July 2015. Petitioner testified she could not remember the exact date but she remembered sending the request to the Welfare Debt Collection unit of MDHHS. Petitioner testified she sent her hearing request there because she previously received correspondence from that unit concerning the overissuance.

Petitioner presented a letter (Exhibit A, p. 2) she stated she faxed to the Michigan Welfare Debt Collection unit on November 10, 2015. The letter stated Petitioner was "requesting a hearing to dispute... the amount of [REDACTED] Petitioner wrote she sent in a hearing request in either July or August 2015. Petitioner also presented a corresponding fax cover sheet (Exhibit A, p. 1) and fax confirmation (Exhibit A, p. 3)- both were dated November 10, 2015.

Petitioner's presented documents do not verify that she sent a hearing request to MDHHS in July 2015. It is theoretically possible that Petitioner wrote her hearing request dated November 10, 2015, in anticipation of an argument of untimeliness with full knowledge that an earlier hearing was never requested. Petitioner had persuasive documentation to verify a hearing request submitted on November 10, 2015, but had none to definitively establish an earlier hearing request was submitted.

Petitioner's testimony and supporting documentation is found to be sufficiently persuasive evidence that Petitioner first requested a hearing in July 2015. Accordingly, Petitioner's hearing request may proceed to the merits of whether Petitioner received an overissuance of FAP benefits.

When a client group receives more benefits than it is entitled to receive, DHS [aka MDHHS] must attempt to recoup the overissuance. BAM 700 (May 2014), p. 1. Within 90 days of determining an overissuance occurred, the RS [recoupment specialist] must:

obtain all evidence needed to establish an overissuance, calculate the amount, [and multiple other requirements.]

MDHHS testimony indicated an expectation that Petitioner's hearing request would be dismissed for untimeliness. MDHHS testimony conceded documents to support the alleged OI were not presented because of that expectation. MDHHS requested to send supporting OI documents during or after the hearing. The request was declined because Petitioner is entitled to advance receipt of hearing exhibits.

There are occasions when documents are admitted as exhibits despite not being sent to the client before the hearing. Such occasions are appropriate when the documents are not easy to anticipate as being relevant. In the present case, MDHHS should have expected to present OI budgets to support a disputed OI.

Receipt of documents is less necessary when a client does not need time to research the accuracy of the documents. For an OI based on employment income, a client should have time to verify the accuracy of OI budgets. For example, Petitioner may have disputed the amount of earned income by MDHHS had she received a copy of the income relied on by MDHHS is calculating the alleged OI. Petitioner could have rebutted information by checking her pay stubs or contacting her former employer. Petitioner was deprived of those opportunities to prepare for the hearing by not receiving an OI budget before the hearing.

MDHHS is left with no documentary evidence to support the alleged OI. Based on presented evidence, it is found that MDHHS failed to establish an OI against Petitioner in the amount of [REDACTED] for the period of August 2014 through November 2014.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish an overissuance of FAP benefits. It is ordered that MDHHS, within 10 days of the date of mailing of this decision, cease and/or reverse FAP recoupment against Petitioner in the amount of [REDACTED] for an alleged overissuance period from August 2014 through November 2014. The actions taken by MDHHS are **REVERSED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **1/20/2016**

Date Mailed: **1/20/2016**

CG/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

