



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: May 15, 2020
MOAHR Docket No.: 15-027130
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 3-way telephone hearing was held on May 7, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Darcus Braswell, recoupment specialist.

ISSUES

The first issue is whether MDHHS established a recipient claim related to Child Development and Care (CDC) benefits allegedly overissued to Petitioner.

The second issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner.

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 [REDACTED] 2012, Petitioner reported to MDHHS a household which included three minor children.
2. As of October 2012, Petitioner was an ongoing recipient of FAP benefits. Also, she received ongoing employment income from [REDACTED] (hereinafter, "Employer1") and was a simplified reporter.
3. From December 2012, through February 2014, Petitioner also received employment income from [REDACTED] (hereinafter, "Employer2").

4. From October 2012 through March 2014, Petitioner received \$5,682 in FAP benefits without her income from Employer2 being factored.
5. As of December 2012, Petitioner was an ongoing recipient of CDC benefits.
6. From December 15, 2012, through February 22, 2014, Petitioner received \$6,197.04 in CDC benefits.
7. On [REDACTED] 2013, Petitioner submitted a CDC application and reported a household which included three minor children. Additionally, Petitioner reported employment with Employer1. Petitioner's income from Employer2 was not reported.
8. On an unspecified date, MDHHS calculated that Petitioner had excess income to receive CDC benefits from December 15, 2012, through February 22, 2014, due to excess income for a 2-person CDC group.
9. On January 16, 2015, MDHHS calculated that Petitioner received an overissuance of \$5,278 in FAP benefits from October 2012 through March 2014 due to Petitioner's alleged failure to timely report income from Employer2. The overissuance (OI) calculation factored the following: Petitioner's actual pays from Employer, FAP issuances totaling \$5,682, and "correct" issuances totaling \$404. MDHHS did not factor that Petitioner was a simplified reporter.
10. On January 16, 2015, MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued \$5,682 in FAP benefits to Petitioner from October 2012 through March 2014 due to client-error.
11. On January 16, 2015, MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued \$6,197.04 in CDC benefits to Petitioner from December 15, 2012, through February 22, 2014, due to client-error.
12. On January 28, 2015, Petitioner requested a hearing to dispute the alleged overissuances.

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).

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. MDHHS administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020. 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 alleged overissuances of CDC and FAP benefits. Petitioner originally requested a hearing on January 28, 2015, but for unstated reasons, MDHHS did not process her hearing request until several years later. Thus, the present case concerns alleged OI from over five years earlier. The analysis will proceed as if MDHHS is not barred from establishing an overissuance due to the lengthy passage of time.

For all programs, when a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), pp. 1-2. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.*

For client-caused FAP and CDC OIs, the overissuance period begins the first month for FAP benefits (or pay period for CDC) that a benefit issuance exceeds the amount allowed by policy or 72 months before the date it was referred to the RS, whichever is later. BAM 715 (October 2017) p. 5. To determine the first month of the overissuance period, MDHHS allows time for:

- The client reporting period, per BAM 105.
- The full standard of promptness (SOP) for change processing, per BAM 220.
- The full negative action suspense period; see BAM 220, Effective Date of Change.

For client caused OIs, the amount of the overissuance is the benefit amount the group or CDC provider actually received minus the amount the group was eligible to receive. *Id.*, p. 6. If improper reporting or budgeting of income caused the overissuance, MDHHS is to use actual income for that income source. *Id.*, p. 8.

Alleged CDC overissuance

A Notice of Overissuance dated January 16, 2015, stated that MDHHS overissued \$6,197.04 in CDC benefits to Petitioner from December 15, 2012, through February 22, 2014, due to client-error. Exhibit A, p. 23. During the hearing, MDHHS specifically alleged that Petitioner failed to timely report employment from Employer2. MDHHS further alleged that had Petitioner's income from Employer2 been factored, she would have had excess income for CDC eligibility.

The allegation that Petitioner failed to timely report employment from Employer was consistent with Petitioner's reporting on an application dated [REDACTED] 2013, requesting CDC benefits. Exhibit A, pp. 149-163. On the application, Petitioner reported employment from Employer1, but not Employer2. Exhibit A, p. 157. Petitioner's employment records from Employer2 listed sporadic pays to Petitioner from December 2012 through February 2014.¹ Exhibit A, pp. 85-91. Additionally, a recoupment specialist testified that Petitioner's case file was checked and there was no indication of a reporting by Petitioner that she received income from Employer2. For purposes of this decision, it will be accepted that Petitioner did not timely report to MDHHS her income from Employer2.

MDHHS did not present budgets to support its conclusion that Petitioner had excess income for CDC. Instead, MDHHS relied on FAP-OI budgets from December 2012 through February 2014 as evidence of Petitioner's countable income for CDC. For each month, Petitioner's gross income was at least \$1,607. MDHHS contended that Petitioner's income of at least \$1,607 rendered her ineligible for CDC because the income limit for a 2-person CDC group is \$1,607. RFT 270 (October 2011) p. 1. Problematic for MDHHS is that Petitioner's CDC group size was not two persons.

Group composition is the determination of which persons living together are included in the CDC program group. BEM 205 (July 2012) p. 1. When CDC is requested for a child, each of the following persons who live together must be in the program group:

- Each child for whom care is requested.
- Each child's legal and/or biological parent(s) or stepparent.
- Each child's unmarried, under age 18, sibling(s), stepsiblings or half sibling(s).
- The parent(s) or stepparent of any of the above sibling(s).
- Any other unmarried child(ren) under age 18 whose parent, step-parent or legal guardian is a member of the program group.

Petitioner's application dated [REDACTED] 2013, reported a household which included herself and three minor children. Presumably, the same household existed at the beginning of the alleged OI period in December 2012. Factoring, Petitioner, her child in need of CDC benefits, and that child's siblings, Petitioner's CDC group size would be 4 persons. Thus, MDHHS's reliance on an income limit of CDC for 2 persons was improper. During the hearing, MDHHS admitted its group composition error and agreed to withdraw the overissuance. Given that improper group composition potentially infected the entire overissuance amount, a reversal of the entire alleged overissuance is appropriate. Given the evidence, MDHHS failed to establish an OI of \$6,197.04 in CDC benefits from December 15, 2012, through February 22, 2014.

Alleged FAP overissuance

¹ The pay documentation was quite blurry and specific pay dates were difficult to discern. It was not clear whether Petitioner received a pay during the week of March 29, 2013, though pays in March 2013 were apparent.

A Notice of Overissuance dated January 16, 2015, stated that MDHHS overissued \$5,278 in FAP benefits to Petitioner from December 2012 through February 2014, due to client-error. Exhibit A, p. 39. MDHHS alleged that the OI was again caused by Petitioner's failure to timely report income from Employer2.

Federal regulations refer to FAP overissuances as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a). Recipient claim amounts not caused by benefit trafficking are calculated by determining the correct amount of benefits for each month there was an OI and subtracting the correct issuance from the actual issuance.² CFR 273.18(c)(1).

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). MDHHS may pursue FAP-related client errors when they exceed \$250. BAM 715 (October 2017), p. 7.

MDHHS presented FAP-OI budgets from October 2012 through February 2014 demonstrating how an OI was calculated. Exhibit A, pp. 47-81. In compliance with policy, the FAP-OI budget factored Petitioner's actual income from Employer2 for each benefit month. BAM 715 (October 2017) p. 7. The FAP-OI budgets factored that Petitioner received \$5,682 in FAP issuances during the OI period; the FAP issuances matched documentation listing Petitioner's issuances from the alleged OI period. Exhibit A, p. 15. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$5,278 was calculated.

For purposes of this decision, it will again be accepted that Petitioner did not report to MDHHS income from Employer2. MDHHS contended that all FAP recipients must report income from a second job; thus, all of Petitioner's income from Employer2 was properly factored in the overissuance calculation.

Not all clients are required to report changes in income. Certified change reporting households are required to report to MDHHS various changes in household circumstances. Changes required to be reported include the starting of employment income. 7 CFR 273.12(a). Change reporters differ from simplified reporters who are required to report only when the group's actual gross monthly income exceeds the simplified reporting income limit for their group size; no other reporting is required. BAM 200 (December 2013) p. 1. Simplified reporters are groups with existing countable earnings. *Id.*, p. 1.

As of October 2012, Petitioner was employed with Employer1 and receiving FAP benefits. The same held true when Petitioner began receiving employment income from Employer2 in December 2012. Based on Petitioner's earnings from Employer1, it can be inferred that Petitioner was a simplified reporter as of December 2012. Thus, she did

² Additionally, MDHHS is to subtract any benefits that were expunged (i.e. unused benefits which eventually expire from non-use). There is no evidence in the present case that any of Petitioner's FAP benefits were expunged.

not have an obligation to report to MDHHS the start of her income with Employer2; her only obligation was to report when her total household income exceeded the simplified reporting income limits.

During the hearing, after MDHHS realized its failure to factor Petitioner's simplified reporting income status, MDHHS agreed to withdraw the overissuance. Given that MDHHS's failure to factor Petitioner's simplified reporting income limit potentially infects the entire overissuance amount, a reversal of the entire alleged overissuance is appropriate. Given the evidence, MDHHS failed to establish an OI of \$5,278 in FAP benefits to Petitioner from December 2012 through February 2014, due to client-error.

Petitioner should be aware that the denial of MDHHS' claims of CDC and FAP does not preclude MDHHS from pursuing overissuances in the future. MDHHS utilized incorrect procedures to calculate overissuances in the present case, but Petitioner may still have received substantial overissuances under a proper CDC group size or application of the simplified reporting income limit. Though the possibility of future overissuances being sought exists, MDHHS indicated that the lapse of time since the OI may bar further pursuit of related overissuances.

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 OI of \$6,197.04 in CDC benefits from December 15, 2012, through February 22, 2014. Also, MDHHS failed to establish an OI of \$5,682 in FAP benefits to Petitioner from October 2012 through March 2014. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Delete the relevant CDC and FAP claims against Petitioner; and
- (2) Cease and reverse any collection actions related to the claims.

The actions taken by MDHHS are **REVERSED**.

CG/cg



Christian Gardocki

Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

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 Email:

MDHHS- Washtenaw-20-Hearings
MDHHS-RECOUPMENT-HEARINGS
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

