



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 23, 2016
MAHS Docket No.: 15-024003
Agency No.: [REDACTED]
Petitioner: MDHHS
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing commenced on March 3, 2016. The hearing was continued until March 16, 2016. The Michigan Department of Health and Human Services was represented by [REDACTED] specialist, and [REDACTED], specialist. Respondent appeared and was unrepresented.

ISSUE

The issue is whether MDHHS established a debt against Respondent for \$7,497 in allegedly over-issued 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. As of March 2014, Respondent was an ongoing FAP recipient receiving ongoing employment income.
2. From March 2014 through October 2015, Respondent received \$7,497 in FAP benefits, in part, based on exclusion of Respondent's employment income.

3. After factoring Respondent's employment income, it is not known how much in FAP benefits Respondent should have received.
4. On [REDACTED], MDHHS mailed Respondent a Notice of Overissuance which alleged Respondent received an overissuance of \$7,497 in FAP benefits, due to agency error, over the period from March 2014 through October 2015.
5. On [REDACTED] Respondent requested a hearing to dispute the overissuance.
6. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a hearing request from MDHHS to establish a debt against Respondent.

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).

MDHHS requested a hearing to establish a debt against Respondent. The debt MDHHS seeks to establish was based on \$7,497 in allegedly over-issued FAP benefits over the timeframe of March 2014 through October 2015.

When the client group or CDC provider receives more benefits than entitled to receive, Michigan Department of Health and Human Services (MDHHS) must attempt to recoup the overissuance. BAM 725 (October 2015), p. 1. Repayment of an overissuance is the responsibility of:

- Anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred.
- A FAP-authorized representative if they had any part in creating the FAP overissuance

Id., p. 1.

Recoupment policies and procedures vary by program and overissuance type. BAM 715 (October 2015), p. 1. When a potential overissuance is discovered, [MDHHS is to] do all of the following:

1. Take immediate action to correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
2. Obtain initial evidence that an overissuance potentially exists.
3. Determine if it was caused by department, provider or client actions. [and]
4. Refer all client errors to the RS [recoupment specialist] within 60 days of suspecting or if a suspected overissuance exists

Id., p. 2

Within 60 days of receiving the referral, the RS must... determine if an overissuance actually occurred [and] determine the type. *Id.*, p. 3. Within 90 days of determining an overissuance occurred, the RS must:

- Obtain all evidence needed to establish it.
- Calculate the amount.
- Establish the discovery date.
- Send a DHS-4358A, B, C & D to the client.
- Enter the FIP, SDA, CDC or FAP overissuance on the Benefit Recovery System (BRS).
- Refer to OIG for investigation if IPV is suspected. [and]
- Send a DHS-4701A, Overissuance Referral Disposition, to the specialist explaining the final disposition.

Overissuances may be pursued if they are client caused or agency caused. [For FAP benefits,] client and Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700 (October 2015), p. 9. The alleged overissuance of the present case exceeds \$250; therefore, MDHHS may pursue the alleged over-issuance of FAP benefits.

The overissuance period begins the first month (or pay period for CDC) benefit issuance exceeds the amount allowed by policy or 72 months before the date it was referred to the RS, whichever is later. *Id.*, p. 4. The amount of the overissuance is the benefit amount the group or 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. 9. For client error overissuances due, at least in part, to failure to report earnings, do not allow the 20 percent earned income deduction on the unreported earnings. *Id.*, p. 8.

MDHHS requests a debt collection hearing when the grantee of an inactive program requests a hearing after receiving the DHS-4358B, Agency and Client Error Information and Repayment Agreement. BAM 725 (October 2015), pp. 16-17. Active recipients are afforded their hearing rights automatically, but MDHHS must request hearings when the program is inactive; see BAM 705 or 715, HEARING REQUESTED, Inactive Cases. *Id.*, p. 17. It is presumed that Respondent is an inactive recipient based on MDHHS' pursuit of a debt.

It was not disputed that Respondent received FAP benefits from March 2014 through October 2015. It was not disputed Respondent received employment income over the same timeframe. It was not disputed that Respondent reported to MDHHS that she had employment income. It was not disputed that Respondent was the caretaker to a minor child throughout the time she received FAP benefits. It was not disputed that MDHHS failed to budget the employment income in determining Respondent's FAP eligibility.

For Family Independence Program (FIP) benefits, MDHHS does not include the non-parental caretaker in the benefit group (see BEM 210) if the caretaker receives FIP as an “ineligible grantee.” If the ineligible grantee is not included in the group, neither is the caretaker’s income. The policy is different for FAP benefits.

[For FAP benefits, a] caretaker is a related or unrelated person who provides care or supervision to a child(ren) under 18 who lives with the caretaker but who is not a natural, step or adopted child. BEM 212 (February 2014), p. 2. This policy does not apply to foster children (see below). *Id.* A person acting as a parent and the child(ren) for whom he acts as a parent who live with him must be in the same group. *Id.*

MDHHS testimony indicated Respondent’s specialist wrongly applied FIP group composition policy in determining Respondent’s FAP eligibility. MDHHS testimony indicated Respondent’s specialist improperly excluded Respondent’s employment income in determining Respondent’s ongoing FAP eligibility. The evidence was suggestive that MDHHS over-issued FAP benefits to Respondent.

MDHHS testimony conceded the alleged over-issuance was discovered on [REDACTED]. Despite discovering the potential over-issuance in February 2015, MDHHS did not correct the ongoing benefits issued to Respondent until several months later. The waiting of several months could hardly be considered “immediate” action (as required by MDHHS policy). Nevertheless, it will be found that Respondent is not entitled to administrative remedy despite MDHHS’ failure to take immediate action.

Based on presented evidence, it is found MDHHS potentially over-issued FAP benefits to Respondent. The question remains of how much, if any, FAP benefits were over-issued.

MDHHS presented two FAP budgets for each of the months from March 2014 through October 2015 (Exhibit 1, pp. 11-76). One of the budgets reflected how the original FAP benefit issuance was calculated. The budgets verified Respondent received \$7,497 in FAP benefits over the alleged overissuance period.

The second series of budgets reflected the amount Respondent should have allegedly received, had Respondent’s employment income been properly factored. Each of the budgets failed to credit Respondent with an 80% employment income credit.

In determining FAP eligibility, MDHHS is to count 80% of a client’s employment income (see BEM 556 (July 2013), p. 3; one exception applies. [MDHHS does not] allow the 20% earned income deduction when determining overissuances due to failure to report earned income; see BAM 720, Intentional Program Violation). *Id.*

MDHHS conceded Respondent reported employment income. The concession is consistent with the concession that the over-issuance of FAP benefits was caused by agency error (as opposed to client error). The concession is also consistent with Respondent’s Assistance Application (Exhibit 1, pp. 86-107) dated [REDACTED], which

verified Respondent reported she had employment income. The improper exclusion of the 20% employment credit renders all FAP over-issuance budgets to be improper.

It is found MDHHS improperly calculated Respondent's potential FAP benefit over-issuance by failing to credit Respondent with a 20% employment income credit. Thus, it is found MDHHS failed to properly calculate the FAP over-issuance for all alleged overissuance months.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a debt against Respondent related to over-issued FAP benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) cease further recoupment actions against Respondent related to a FAP benefit overissuance from March 2014 through October 2015 related to reported employment income; and
- (2) issue FAP benefits to Respondent, if any, that have already been recouped and/or repaid.

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

CG/hw



Christian Gardocki

Administrative Law Judge

for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

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

DHHS

[REDACTED]

[REDACTED]

Respondent

[REDACTED]