



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
Date Mailed: [REDACTED]
MAHS Docket No.: 15-018295
Agency No.: [REDACTED]
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 was held on [REDACTED], from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator, and [REDACTED], recoupment specialist. [REDACTED] of the Office of Attorney General represented MDHHS. Respondent appeared and was represented by his attorney, [REDACTED].

ISSUE

The issue is whether MDHHS established a debt against Respondent for allegedly over-issued Food Assistance Program (FAP) and Family Independence Program (FIP) 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. Respondent was an ongoing FAP and FIP benefit recipient.
2. Respondent received ongoing employment income.
3. From [REDACTED], Respondent received \$6,689 in FIP benefits, in part, based on Respondent having \$0 employment income.

4. From [REDACTED], Respondent should have received \$0 FIP benefits.
5. From [REDACTED], Respondent received \$6,689 in FAP benefits, in part, based on Respondent having \$0 employment income.
6. From [REDACTED], Respondent should have received \$28 in FAP benefits.
7. From [REDACTED], Respondent received \$18,796 in FAP benefits, in part, based on Respondent having \$0 employment income.
8. From [REDACTED], Respondent should have received \$53 in FAP benefits.
9. From [REDACTED], Respondent received \$3,526 in FAP benefits.
10. From [REDACTED] Respondent should have received \$224 in FAP benefits.
11. On [REDACTED], MDHHS mailed various Notices of Overissuances (OIs) to Respondent alleging various OIs due to client error.
12. On [REDACTED], Respondent requested a hearing to dispute the alleged OIs.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. MDHHS (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS submitted a written request for a hearing to establish Respondent committed an intentional program violation (IPV). MDHHS testimony indicated that a hearing was actually requested to establish a debt against Respondent; MDHHS stated an IPV might be pursued against Respondent at a later date.

Generally, parties may not amend hearing requests during the hearing. In the present case, the change in hearing is not deemed to be unreasonable. Respondent raised no objections to the change. Further, the primary purpose of an IPV hearing is to establish an OI of benefits caused by a client's fraud; a debt collection hearing also requires establishment of an OI, though the cause of the OI need not be established by fraud. The similarity in proofs between debt establishment and IPV supports finding that Respondent was not harmed by MDHHS' indication of pursuit of IPV. It is found MDHHS may proceed with a debt collection action against Respondent.

[MDHHS] requests hearings for debt establishment and collection purposes. BAM 725 (May 2010), p. 13. The hearing decision determines the existence and collectability of a debt to the agency. *Id.*

[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. *Id.* Active recipients are afforded their hearing rights automatically, but [MDHHS] must request hearings when the program is inactive. *Id.*

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.

[For agency error overissuances, MDHHS] must request the hearing on a closed case. BAM 705 (July 2014), p. 11. A hearing request on a DHS-4358D for a closed case requires the Recoupment Specialist to request a debt collection hearing, regardless of the total overissuance amount. *Id.* [MDHHS is to] complete a DHS-3050 indicating the hearing is for a debt collection issue. *Id.* [MDHHS is to] forward the DHS-4358A, -B, -C, and -D, DHS-3050 and all exhibits to MAHS. *Id.* See BAM 725 regarding evidence and debt collection hearing procedures. *Id.* A functionally equivalent policy applies for overissuances caused by client error (see BAM 715 (July 2014), p. 12).

MDHHS seeks to establish a debt against Respondent for allegedly over-issued FAP benefits. MDHHS alleged the OI was caused by client error. Specifically, MDHHS alleged Respondent repeatedly failed to report employment income.

Overissuances may be pursued if they are client caused or agency caused. [For FAP and FIP benefits,] agency error OI's [sic] are not pursued if the estimated OI amount is less than \$125 per program. *Id.*, p. 4. [For FAP and FIP benefits,] client error OIs are not pursued if less than \$125 unless either... the client or provider is active for the program, or the OI is the result of a quality control (QC) audit finding. *Id.*, p. 7.

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. BAM 700 (October 2015), 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.

MDHHS alleged Respondent received an OI of benefits from four different client errors. Each OI will be separately examined.

MDHHS presented a Notice of Overissuance (Exhibit 1, p. 2, 7) dated [REDACTED]. The notice alleged Respondent received an OI of \$6,689 in FIP benefits from [REDACTED].

MDHHS alleged the OI was caused by a failure to budget Respondent's employment income. MDHHS presented a copy of Respondent's employment income history (Exhibit 1, pp. 51-55).

MDHHS presented a summary of Respondent's FIP benefit history (Exhibit 1, p. 3). The summary stated Respondent received \$6,689 in FIP benefits over the alleged OI period. Generally, documentation of actual FIP history is preferred to summaries of history. Respondent did not dispute receiving the FIP benefits. Presented documentation sufficiently established FIP benefits Respondent received during the alleged OI period.

MDHHS presented various budgets for each of the months from the OI period (Exhibit 1, pp. 15-50). The documents included an original FIP budget, each of which listed \$0 employment income, and a corresponding OI budget which factored Respondent's employment income. The presented budgets verified Respondent received an OI of \$6,689 in FIP benefits.

The cause of error need not be determined as MDHHS may pursue collection actions whenever the OI exceeds \$125. It is found MDHHS established a debt against Respondent for \$6,689 in over-issued FIP benefits. The analysis will proceed to consider other alleged OIs.

MDHHS presented a Notice of Overissuance (Exhibit 1, p. 65, 70) dated [REDACTED]. The notice alleged Respondent received an OI of \$4,546 in FAP benefits from [REDACTED].

MDHHS alleged the OI was caused for the same reason as the first OI, Respondent's failure to report employment income. MDHHS relied on the same employment history (see Exhibit 1, pp. 51-55, 104-108) factored in the FIP OI.

MDHHS presented a summary of Respondent's FAP benefit history (Exhibit 1, p. 75). The summary indicated Respondent received \$4,574 in FAP benefits over the alleged OI period. Generally, documentation of actual FAP issuance history is preferred to summaries of history. Respondent did not dispute receiving the FAP benefits. The documentation sufficiently established FAP benefits Respondent received during the alleged OI period.

MDHHS presented various budgets for each of the months from the OI period (Exhibit 1, pp. 76-103). The documents included an original FAP budget, each of which listed \$0 employment income, and a corresponding OI budget which factored Respondent's employment income. The presented OI budgets indicated Respondent should have received \$0 in FAP benefits for all months except for [REDACTED] (a \$28 issuance was calculated). The budgets appeared to establish an OI of \$4,546.

Presented OI budgets notably failed to credit Respondent with a 20% employment income credit. Though MDHHS may pursue an OI for agency error, MDHHS may not deny the 20% credit unless it was caused by a Respondent's failure to report income. For client error overissuances due, at least in part, to failure to report earnings, [MDHHS is to] not allow the 20 percent earned income deduction on the unreported earnings. *Id.*, p. 8.

MDHHS presented a Redetermination (Exhibit 1, pp. 57-60, 110-113) which listed a mailing date of [REDACTED]. Respondent signed but did not date the document. Presumably, Respondent signed the document near [REDACTED] which Respondent's specialist documented to be a date when Respondent would come in to sign the document (see Exhibit 1, p. 60). No employment income was listed for Respondent on the form. Respondent's employment history clearly indicates Respondent was employed at the time he likely signed the Redetermination.

Respondent testified he barely speaks English and that his specialist completed the document during an interview with Respondent. It is theoretically possible that Respondent reported he was employed and his specialist failed to document the income; the possibility is improbable. Respondent's specialist was thoughtful enough to complete Respondent's documentation at his request. Respondent's specialist documented other income such as SSI as chore service income (see Exhibit 1, p. 112). Respondent's specialist also seemed to be thorough by documenting events such as Respondent's absence of signature and various conversations with Respondent (see Exhibit 1, pp. 61-62, 114-115). It is also notable that Respondent's employment income was not factored into future budgets (see below).

It is found the failure to factor employment income in determining Respondent's FAP eligibility was caused by Respondent. Accordingly, MDHHS properly did not credit Respondent with a 20% employment income credit.

It was curious that the alleged OI benefit period for FAP benefits was shorter than the FIP benefit period. MDHHS testimony indicated standards for reporting and processing differ between the FIP and FAP programs; MDHHS testimony indicated the difference in reporting standards dictated a difference in OI periods. The MDHHS explanation was not persuasive, however, the result appears to help Respondent as a longer OI period for FAP benefits appears allowable.

It is found MDHHS established a debt against Respondent for \$4,546 in FAP benefits. The analysis will proceed to determine the third alleged OI against Respondent.

MDHHS presented a Notice of Overissuance (Exhibit 1, p. 124, 130) dated [REDACTED]. The notice alleged Respondent received an OI of \$18,743 in FAP benefits from [REDACTED].

MDHHS testimony alleged the OI was caused by a failure to budget Respondent's employment income but under a slightly different circumstance than previous OIs. As of [REDACTED], MDHHS began budgeting Respondent's employment income. It was not disputed that Respondent reported his employment income temporarily stopped. Respondent's pay history indicated the stoppage in pays was very temporary as only approximately four weekly pays ([REDACTED]) during Respondent's 2 year+ employment history were not issued. MDHHS alleged Respondent repeatedly failed to report a restart of employment income causing a massive windfall of FAP benefits for Respondent.

MDHHS presented a summary of Respondent's FAP benefit history (Exhibit 1, pp. 112-126) from the alleged OI period. The summary indicated Respondent received \$18,796 in FAP benefits over the alleged OI period. Generally, documentation of actual FAP issuance history is preferred to summaries of history. Respondent did not dispute receiving the FAP benefits. The documentation sufficiently established FAP benefits Respondent received during the alleged OI period.

MDHHS presented various budgets for each of the months from the OI period (Exhibit 1, pp. 137-262). The documents included original FAP budgets from the benefit months. MDHHS also included Respondent's employment income history (Exhibit 1, pp. 263-268), Respondent's unemployment compensation history (Exhibit 1, pp. 269-272), Respondent's child's SSA income verification (Exhibit 1, pp. 274-276), and a history of Respondent's spouse's chore services payment history (Exhibit 1, p. 277, 315). The OI budgets appeared to properly budget all sources of Respondent's FAP group's income. The budgets appeared to establish an OI of \$18,743.

Presented budgets again did not credit Respondent with a 20% employment income credit. MDHHS presented evidence to justify withholding the credit.

MDHHS presented a Semi-Annual Contact Report (Exhibit 1, pp. 284-285) signed by Respondent on [REDACTED]. The Semi-Annual Contact Report stated an end date of employment on [REDACTED]. Respondent's pay history shows Respondent did not receive 2 pays in [REDACTED]. The close proximity between the date Respondent signed the Semi-Annual Contact Report and weeks he did not receive pays, it could be reasonably concluded the documentation was not highly persuasive evidence of client error.

MDHHS presented Respondent's Assistance Application (Exhibit 1, pp. 293-314) submitted to MDHHS on [REDACTED]. Respondent reported being laid-off on [REDACTED]. Respondent's pay history indicates Respondent only worked a total of 8 hours over a two week period in July 2013 (see Exhibit 1, p. 266).

It cannot be stated that the presented Semi-Annual Contact Report and Assistance Application established written statements which contradicted reality. A third document from Respondent was more compelling evidence of client error.

MDHHS presented a Redetermination (Exhibit 1, pp. 319-322). Respondent's signature was undated but a MDHHS specialist dated as a witness on [REDACTED]; presumably, [REDACTED] was also the date of Respondent's signature. The Redetermination listed no employment income for Respondent. This contradicts Respondent's employment history which verified ongoing employment income through [REDACTED].

It is found MDHHS established a debt against Respondent for \$18,743 in FAP benefits. The analysis will proceed to determine the fourth alleged OI against Respondent.

MDHHS presented a Notice of Overissuance (Exhibit 1, p. 339) dated [REDACTED]. The notice alleged Respondent received an OI of \$3,302 in FAP benefits from [REDACTED].

MDHHS testimony alleged the OI was again caused by a failure to budget Respondent's employment income, but from a different employer than factored in the first three OIs. MDHHS presented Respondent's pay history from the employer (Exhibit 1, pp. 371- 374) which listed weekly pays from 2015.

MDHHS presented a summary of Respondent's FAP benefit history (Exhibit 1, p. 340) from the alleged OI period. The summary indicated Respondent received \$3,526 in FAP benefits over the alleged OI period. Generally, documentation of actual FAP issuance history is preferred to summaries of history. Respondent did not dispute receiving the FAP benefits. The documentation sufficiently established FAP benefits Respondent received during the alleged OI period.

MDHHS presented various budgets for each of the months from the OI period (Exhibit 1, pp. 348-370). MDHHS also included income verifications for all budgeted income

(Exhibit 1, pp. 371-383) The OI budgets appeared to properly budget all sources of Respondent's FAP group's income. The budgets appeared to establish an OI of \$3,302.

Presented budgets yet again did not credit Respondent with a 20% employment income credit. MDHHS presented evidence to justify withholding the credit.

MDHHS presented a Semi-Annual Contact Report (Exhibit 1, pp. 409-410) signed and dated by Respondent on [REDACTED]. The document reported no employment income. This document contradicted Respondent's pay history. It is found MDHHS established a debt against Respondent for \$3,302 in FAP benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established the following debts against Respondent: \$6,689 from over-issued FIP benefits from [REDACTED], \$4,546 from over-issued FAP benefits from [REDACTED], \$18,743 from over-issued FAP benefits from [REDACTED], and \$3,302 from over-issued FAP benefits from [REDACTED]. The actions taken by MDHHS are **AFFIRMED**.

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 [REDACTED]; 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]

Counsel for Respondent

[REDACTED]

Counsel for Respondent

[REDACTED]

Respondent

[REDACTED]