



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: October 12, 2016
MAHS Docket No.: 16-010281
Agency No.: [REDACTED]
Petitioner: MDHHS
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

DEBT ESTABLISHMENT HEARING DECISION

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), 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 October 3, 2016, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], recoupment specialist. Respondent appeared and testified.

ISSUE

The issue is whether MDHHS established a debt against Respondent for 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. Respondent was an ongoing FAP benefit recipient.
2. Respondent received employment income for a job from the 2nd quarter of 2013 through the 1st quarter of 2014.
3. Respondent received employment income from a second job from October 2013 through April 2015.

4. Respondent received employment income from a third job from October 2013 through June 2014.
5. Respondent did not timely report her employment income to MDHHS.
6. From April 2013 through February 2014, received [REDACTED] in FAP benefits, in part, based on \$0 employment income.
7. From April 2013 through February 2014, Respondent would have been eligible to receive [REDACTED] in FAP benefits if her employment income was factored.
8. On [REDACTED], MDHHS mailed Respondent a Notice of Overissuance which alleged Respondent received an overissuance of [REDACTED] in FAP benefits, due to client error, over the period from July 2013 through February 2014.
9. On [REDACTED], Respondent requested a hearing to dispute the overissuance.
10. 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 “debt collection” hearing for the purpose of establishing a debt against Respondent. [MDHHS] may request a hearing to... establish an intentional program violation and disqualification... [or to] establish a collectable debt on closed cases. BAM 600 (October 2015), p. 4.

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.... *Id.*, p. 17.

All cases that contain an adult member from the original overissuance group and are active for the program in which the overissuance occurred are liable for the overissuance and subject to administrative recoupment. *Id.*, p 1. Overissuances on inactive programs are recouped through cash repayment processes. *Id.* It was not

disputed that Respondent was an inactive benefit recipient at the time MDHHS requested a hearing.

MDHHS presented a Notice of Overissuance (Exhibit 1, pp. 49-50) dated [REDACTED], [REDACTED]. The notice alleged Respondent received [REDACTED] in over-issued FAP benefits due to client error. The alleged overissuance period was from July 2013 through February 2014.

[For FIP and FAP benefits,] 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 700 (January 2016), 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.

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.

MDHHS must establish an overissuance of benefits in order to establish a debt against Respondent. MDHHS alleged Respondent received an overissuance of benefits because of employment income not factored in Respondent's FAP eligibility.

MDHHS presented a history of Respondent's FAP benefit issuances (Exhibit 1, pp. 32-33). The history verified a total of [REDACTED] in FAP benefits was issued to Respondent from July 2013 through February 2014.

MDHHS presented an Employee Wage Match History (Exhibit 1, p. 23) for Respondent. The document listed Respondent's earnings from various quarters. The document also listed the employers from which Respondent received income. The document verified Respondent received a monthly average of income for one of her employers as follows: [REDACTED] in the 2nd quarter of 2013, [REDACTED] in the 3rd quarter of 2013, [REDACTED] in the 4th quarter of 2013, and [REDACTED] in the 1st quarter of 2014.

MDHHS presented a worknumber.com history (Exhibit 1, pp. 25-27) for one of Respondent's other jobs. Various biweekly pays from October 2013 through April 2015 were listed.

MDHHS presented a worknumber.com history (Exhibit 1, pp. 28-29) for a third job of Respondent's. Various biweekly pays from October 2013 through June 2014 were listed.

MDHHS presented various OI budgets (Exhibit 1, pp. 36-47) from July 2013 through February 2014. The budgets factored Respondent's employment income. The budgets calculated Respondent was eligible to receive a total of [REDACTED] in FAP benefits from July 2013 through February 2014.

MDHHS policy categorizes overissuances into 3 different types: client error, agency error, and intentional fraud (see BAM 700). Client and Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 9.

In determining whether MDHHS may pursue the OI, it is not relevant whether the income not factored by MDHHS was the fault of Respondent or MDHHS. The fault is relevant in determining if the presented budgets correctly calculated the OI as MDHHS did not factor a 20% employment income deduction.

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... *Id.* [The exception applies to]... IPV overissuances issued in or after October 1987 [, and]... client error overissuances issued in or after September 1996. *Id.*

MDHHS alleged the failure to factor Respondent's employment income in the original FAP benefit determinations was the fault of Respondent. MDHHS justified the allegation, in part, based on a windfall of benefits to Respondent. MDHHS also justified the allegation, in part, based on the absence of documentation during the OI period that Respondent timely reported employment.

Respondent testified that she reported the employment income to her specialist. Respondent's testimony was neither supported with other evidence, nor directly rebutted.

It must be acknowledged that a reasonable scenario can be foreseen from each side's allegations. It is reasonably possible that Respondent, three times, failed to report part-time employment, presumably, for the purpose of continued enjoyment of the maximum FAP benefit issuance for her group size. A reasonable scenario based on Respondent's testimony is that her specialist incompetently ignored three separate verbal reports of employment.

Though both of the above scenarios are possible, only one could have occurred. It is notable that if Respondent was responsible enough to report employment three different times to MDHHS, she would also be responsible enough to know that MDHHS did not process her reporting because no change in benefits occurred.

Given each possibility, the more likely scenario is that Respondent thrice failed to report employment income to MDHHS specialist. Accordingly, the failure to factor Respondent's employment income is found to be client error, and therefore, Respondent was not entitled to a 20% employment income credit.

Subtracting the amount of benefits Respondent received from the amount of benefits Respondent should have received results in an overissuance of [REDACTED] in FAP benefits. It is found MDHHS established an overissuance in [REDACTED] in FAP benefits from the period from July 2013 through February 2014.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a debt against Respondent for [REDACTED] based on an overissuance of FAP benefits for the period from July 2013 through February 2014. 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 (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]