

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

IN THE MATTER OF:

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MAHS Reg. No.: 16-000139
Issue No.: 3006
Agency Case No.: ██████████
Hearing Date: February 18, 2016
County: Wayne (31)

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; 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 February 18, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by ██████████, recoupment specialist, and ██████████, supervisor.

ISSUE

The issue is whether MDHHS established a basis for recoupment of 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. Petitioner was an ongoing FAP and FIP benefit recipient.
2. On ██████████, MDHHS mailed Notices of Overissuance to Petitioner alleging Petitioner received an overissuance of \$1,351 of FAP benefits and \$1,895 in FIP benefits over the months from November 2014 through March 2015.
3. On ██████████, Petitioner 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).

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 presented two Notices of Overissuance dated [REDACTED]. One notice stated Petitioner received \$1,895 in over-issued cash benefits over the period of November 2014 through March 2015 (see Exhibit 1, pp. 13-16). A second notice stated Petitioner received \$1,351 in over-issued FAP benefits over the period of November 2014 through March 2015 (see Exhibit 1, pp. 32-35). Petitioner requested a hearing to dispute both recoupments.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (October 2015), 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, send a DHS-4358A, B, C & D to the client, enter the programs on BRS, refer all suspected IPV overissuances to OIG for investigation, and send a DHS-4701A, Overissuance Referral Disposition, to the specialist explaining the final disposition of the error. *Id.*, p. 11.

[For FAP and FIP benefits,] active programs are subject to Administrative Recoupment (AR) for repayment of overissuances. BAM 725 (October 2015), p. 6. Administrative recoupment continues until program closure or all collectible overissuances are repaid. *Id.*

The presented Notices of Overissuance stated that the reason for overissuance was "Client Error." MDHHS testimony alleged Petitioner failed to report employment to MDHHS, which caused an OI of FAP and FIP benefits.

Petitioner testified she reported the relevant employment to her Michigan Works! Agency (MWA) case worker. Presented MWA case notes (Exhibit 1, p. 2) verified Petitioner's testimony. MDHHS contended Petitioner had an obligation to also report the employment to her MDHHS eligibility specialist.

Petitioner's reporting of employment to a MWA case worker is found to be the equivalent of reporting employment to MDHHS. MWA are understood to be contractors for MDHHS. As contractors, they essentially stand in the shoes of MDHHS. If MWA does not forward the information to MDHHS, that is the fault of MWA, not Petitioner. It is found that any OI was caused by MDHHS' error, not Petitioner's.

Petitioner contended that the OI should be dismissed because it was not her fault that MDHHS failed to factor her reported employment. MDHHS policy does not allow for such a remedy.

An agency error is caused by incorrect actions (including delayed or no action) by the Michigan Department of Health and Human Services (MDHHS) staff or department processes. BAM 700 (October 2015) p. 4 and BAM 705 (October 2015), p. 1. Agency error overissuances are not pursued if the estimated amount is less than \$250 per program. BAM 700 (October 2015) p. 4 and BAM 705 (October 2015), p. 1.

Thus, MDHHS can seek recoupment against Petitioner even though MDHHS inaction caused the alleged OI. The analysis will proceed to consider whether MDHHS established an OI occurred.

MDHHS presented a Verification of Employment (Exhibit 1, pp. 9-10) along with a history of Petitioner's pays (Exhibit 1, p. 11). Petitioner did not dispute the items accurately reflected income she received from employment.

[For FAP and FIP benefits,] if improper budgeting of income caused the overissuance, [MDHHS is to] use actual income for the past overissuance month for that income source. BAM 705 (October 2015), p. 7. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. *Id.*

MDHHS presented Petitioner's FIP benefit history (Exhibit 1, pp. 18-19). The documents verified Petitioner received \$389/month in FIP benefits from November 2014 through March 2015. The documents established Petitioner received a total of \$1945 in FIP benefits over the alleged OI period.

MDHHS presented FIP overissuance budgets (Exhibit 1, pp. 21-30) for each month from November 2014 through March 2015. The budgets accurately included Petitioner's previously unbudgeted employment income. Petitioner did not allege the budgets contained any inaccuracies. The budgets established Petitioner should have received \$50 in FIP benefits over the alleged OI benefit period. Thus, MDHHS is entitled to recoup \$1,895 in FIP benefits.

MDHHS presented Petitioner's FAP benefit history (Exhibit 1, p. 31). The document verified Petitioner received \$357 in monthly FAP benefits from November 2014 through March 2015. The documents established Petitioner received a total of \$1785 in FAP benefits over the alleged OI period.

MDHHS presented FAP overissuance budgets (Exhibit 1, pp. 38-47) for each month from November 2014 through March 2015. Petitioner did not allege the budgets contained any inaccuracies. Two inaccuracies were noticed after the hearing.

MDHHS typically issues FAP budget credits of 20% for employment income- with one notable exception. [MDHHS is to]... not allow the 20% earned income deduction when determining overissuances due to failure to report earned income. BEM 556 (July 2013), p. 7.

MDHHS considered Petitioner's employment income to be unreported and accordingly did not apply a 20% employment income credit in determining the amount of OI. As found above, Petitioner's income was reported and was only not included due to agency error. The failure by MDHHS to issue the 20% credit renders all presented FAP budgets to be improper. For good measure, a second inaccuracy prevents affirming the calculated FAP overissuance.

The presented FAP budgets each factored Petitioner received \$389 in monthly FIP issuances. Though this is technically correct, it has already been found that MDHHS may recoup all budgeted FIP benefits despite MDHHS causing the OI. MDHHS policy allows the budgeting of FIP income received by Petitioner in the benefit month (see BAM 705), however, the policy is not interpreted to apply when MDHHS recoups the benefits.

It is found MDHHS improperly calculated Petitioner's alleged overissuance of FAP benefits over the period from November 2014 through March 2015. Accordingly, MDHHS did not accurately establish an OI of FAP benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established Petitioner received an overissuance of \$1895 in FIP benefits over the period from November 2014 through March 2015. The actions taken by MDHHS are **PARTIALLY AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish an accurate OI of FAP benefits for the period of November 2014 through March 2015. It is ordered that MDHHS begin the following actions, in accordance with policy and this hearing decision, within 10 days of the date of mailing of this decision:

- (1) cease any recoupment against Petitioner related to the alleged overissuance of FAP benefits totaling \$1,351; and
- (2) issue any benefits, if any, improperly not issued.

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



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **FEBRUARY 29, 2016**

Date Mailed: **FEBRUARY 29, 2016**

CG / hw

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

