



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: June 9, 2016
MAHS Docket No.: 16-005931
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; 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 June 1, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator, and [REDACTED] (via telephone), recoupment specialist.

ISSUE

The issue is whether MDHHS established a basis for recoupment of 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. Petitioner was an ongoing FAP recipient.
2. On an unspecified date, MDHHS determined Petitioner received \$984 in over-issued FAP benefits, based on allegedly unreported income by Petitioner.
3. Petitioner did not fail to report income to MDHHS.
4. On [REDACTED], MDHHS mailed a Notice of Overissuance (Exhibit 1, p. 36) to Petitioner alleging Petitioner received an overissuance of \$984 in FAP benefits over the months from December 2015 through March 2016, due to client error.

5. On [REDACTED], Petitioner requested a hearing to dispute the OI.
6. On [REDACTED], MDHHS mailed a Notice of Overissuance (Exhibit 1, p. 41) to Petitioner alleging Petitioner received an overissuance of \$984 in FAP benefits over the months from December 2015 through March 2016, due to agency error.

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).

Petitioner requested a hearing to dispute a recoupment of FAP benefits. MDHHS alleged Petitioner received \$984 in over-issued FAP benefits over the period from December 2015 through March 2016

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.

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.

[For FAP 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.*

MDHHS testimony alleged Petitioner received an OI of FAP benefits due to employment income not being factored in Petitioner's FAP determinations. MDHHS presented various documents to support the OI.

[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 a Verification of Employment (Exhibit 1, pp. 16-17) signed [REDACTED] MDHHS testimony indicated the document was received after being sent to Petitioner's employer. The document listed Petitioner's hourly wage, work hours, and two of Petitioner's pays from July 2015. The document was accompanied by a letter from Petitioner's employer (Exhibit 1, p. 18) indicating Petitioner did not work for an approximate 2 month period in summer. MDHHS also presented a letter (Exhibit 1, p. 23) listing Petitioner's pay history from September 2014 through February 2016.

MDHHS presented Petitioner's FAP benefit history (Exhibit 1, p. 14). The document verified Petitioner received \$281 in FAP benefits for November 2015 through January 2016 and \$321 in FAP benefits for February 2016. Petitioner's March 2016 FAP issuance was not listed.

MDHHS presented an Overissuance Summary (Exhibit 1, p. 37, 42). The document listed Petitioner's previous FAP issuances and allegedly corrected FAP benefit issuances for the alleged OI period.

MDHHS presented various Food Assistance Worksheets (Exhibit 1, pp. 26-27, 30-31) representing each of the alleged OI months. MDHHS testimony indicated the worksheets are essentially budgets for each of the OI months and verify how the OI was calculated. Most notably, the worksheets did not factor employment income credits.

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 testimony conceded that Petitioner timely reported the employment income not factored in Petitioner's FAP eligibility. The MDHHS concession was consistent with Petitioner's benefit application from September 2014 which listed the employment (see Exhibit 1, p. 9).

Apparently, MDHHS initially thought Petitioner failed to report the employment income because the first overissuance notice mailed to Petitioner (Exhibit 1, p. 36) alleged the OI was caused by Petitioner's error. A subsequently issued notice correctly alleged an agency error.

Though MDHHS rightly mailed Petitioner an updated Notice of Overissuance, MDHHS failed to update the OI budgets. MDHHS should have factored the 20% credit for employment income; MDHHS failed to do so. Thus, it cannot be determined if Petitioner received an OI of FAP benefits, and if she did, how much the OI was. Accordingly, it is found MDHHS failed to establish a basis for recoupment against Petitioner.

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 overissuance of FAP benefits. It is ordered that MDHHS, within 10 days of the date of mailing of this decision, cease and/or reverse FAP recoupment against Petitioner in the amount of \$984 for an alleged overissuance from December 2015 through March 2016. 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]

Petitioner

[REDACTED]