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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: December 29, 2016
MAHS Docket No.: 16-014834
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 [REDACTED], from [REDACTED] Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], recoupment specialist. [REDACTED], hearing coordinator, and [REDACTED], clerical worker, testified on behalf of MDHHS. Respondent appeared and was unrepresented.

ISSUE

The issue is whether MDHHS established a debt against Respondent for 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. From [REDACTED] through [REDACTED], Respondent was an ongoing FAP benefit recipient.
2. From [REDACTED] through [REDACTED], Respondent's living-together partner (LTP) had employment income
3. On [REDACTED], Respondent's living-together partner (LTP) moved into her residence.

4. On [REDACTED], Respondent reported to MDHHS that her LTP was employed.
5. From [REDACTED] through [REDACTED], Respondent received an OI of [REDACTED] in FAP benefits, in part due to Respondent's failure to timely report the employment of her LTP.
6. On [REDACTED], MDHHS requested a hearing to establish a debt of [REDACTED] against Respondent, based on allegedly over-issued FAP benefits from [REDACTED] through [REDACTED].

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. The purpose of the hearing is to establish a debt against Respondent for previously over-issued benefits.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. An overissuance [bold lettering removed] is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. *Id.* Recoupment [bold lettering removed] is a MDHHS action to identify and recover a benefit overissuance. *Id.*, p. 2.

[MDHHS] may request a hearing 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.

MDHHS presented a Notice of Overissuance (Exhibit 1, p. 1) dated [REDACTED]. The notice alleged Respondent received [REDACTED] in over-issued FAP benefits from [REDACTED] through [REDACTED]. The Notice of Overissuance stated "client error" was the cause of the OI.

Respondent contended she may have received an OI of benefits, however, MDHHS was at fault. Therefore, Respondent contended, MDHHS should not be able to establish a debt.

[For FAP benefits,] client and Agency errors are not pursued if the estimated amount is less than [REDACTED] per program. BAM 700 (October 2015), p. 9. The alleged overissuance of the present case exceeds [REDACTED]; therefore, MDHHS may pursue the alleged overissuance of FAP benefits regardless of the party responsible for causing the alleged OI.

MDHHS testimony alleged Respondent failed to report her LTP was a member of her household and that he received employment income. It was not disputed that Respondent's LTP was the father of children in Respondent's household, and therefore, a mandatory FAP benefit group member. MDHHS presented documentation to support that an OI occurred.

MDHHS presented an Employee Wage History by Recipient ID report. The report is known to be based on reported employee earnings from employers. Quarterly employment earnings for Respondent's LTP were listed from the final quarter in [REDACTED] through the first quarter of [REDACTED].

MDHHS present an Issuance Summary (Exhibit 1, p. 9) and corresponding OI budgets (Exhibit 1, pp. 10-31). The budgets factored Respondent's LTP as a group member. The budgets also factored a third of Respondent's LTP's quarterly income as listed on the IG-001 report. Employment income was categorized as "unreported," thereby depriving Respondent of a 20% budget credit for reported employment income. The budgets calculated that Respondent received a total OI of [REDACTED] from [REDACTED] through [REDACTED].

MDHHS presented a history of Respondent's FAP eligibility (Exhibit 1, pp. 6-8) from [REDACTED] through [REDACTED]. Total issuances of [REDACTED] from [REDACTED] through [REDACTED] were listed.

MDHHS presented Respondent's electronically-submitted application for medical benefits (Exhibit 1, pp. 38-63). The application was dated [REDACTED]. Listed household members included only Respondent and her minor child.

MDHHS presented Respondent's Redetermination (Exhibit 1, pp. 64-69). Respondent's signature was undated though a MDHHS submission date of [REDACTED] was indicated. The document listed Respondent, her LTP, and daughter as household members. Respondent listed [REDACTED] as the date her LTP moved into the residence. Respondent listed employment income for her LTP.

MDHHS testimony implied Respondent's statements from her application and Redetermination were contradictory; the statements were not contradictory. It is

plausible that Respondent's LTP moved into Respondent's residence in [REDACTED], but after Respondent's application submission date.

Respondent testified that she reported to the Office of Child Support in [REDACTED] that her LTP was living in with her. Respondent testified that her LTP began living with her "shortly prior" to then. Respondent testified she did not recall the exact date her LTP moved into her residence.

[REDACTED] presented evidence, Respondent's LTP appeared to move into Respondent's residence between [REDACTED] and [REDACTED]. A move-in date of [REDACTED] will be conjectured, giving Respondent the most favorable move-in date possible.

The analysis must address when Respondent reported her LTP's income to MDHHS. The finding is required to determine if presented budgets justified factoring Respondent's LTP's income as unreported.

MDHHS policy requires clients to receive a 20% FAP budget credit for reported employment income (see BEM 556 (July 2013), p. 1). [MDHHS is to not allow a 20% earned income deduction when determining overissuances due to a client failure to report earned income (see BEM 720 Intentional Program Violation). BEM 556 (July 2013) p. 3.

MDHHS presented a First Customer Contact Letter (Exhibit 1, pp. 74-75) dated [REDACTED]. The Office of Child Support mailed the letter to Respondent requesting paternity information for Respondent's child. Respondent appeared to respond by sending a letter dated [REDACTED] (Exhibit 1, p. 78) stating that her LTP recently moved into her residence and was helping with their expenses.

Presented evidence tended to verify that Respondent reported to OCS in [REDACTED] that her LTP lived with her. A reporting to OCS is a reporting to MDHHS. Respondent's letter to OCS may have verified a reporting of her LTP as a household member. The letter did not report income for her LTP. A statement that her LTP "is helping" with some household costs is too vague to be interpreted as a reporting of income.

It is also notable that Respondent only appeared to report her LTP as a resident after she was contacted by OCS. Respondent might have reported her LTP as a household member had OCS not requested paternal information, however Respondent appeared to already delay her reporting by approximately [REDACTED] months. This consideration renders it more likely that Respondent did not report her LTP's employment income to MDHHS.

It is found Respondent did not report her LTP's employment income to MDHHS until [REDACTED] [REDACTED]. Thus, there is justification for MDHHS to have factored Respondent's LTP as unreported. The justification does not extend to all budget months.

The Redetermination dated [REDACTED], listed Respondent's LTP's income. MDHHS cannot claim Respondent's LTP's income was unreported as of the Redetermination submission date. The early [REDACTED] submission date should have allowed MDHHS to affect Respondent's FAP eligibility beginning [REDACTED]. If Respondent received an OI of FAP benefits for [REDACTED] through [REDACTED] [REDACTED] the amount of OI cannot be calculated because MDHHS should have calculated the OI based on reported employment income.

It is found MDHHS failed to establish Respondent received an OI of FAP benefits from [REDACTED] and January 2016. MDHHS is left with an OI from [REDACTED] through [REDACTED]. MDHHS failed to apply the proper processing timeframes in determining when the OI started.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

[MDHHS is to] act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (October 2015), p. 7. If the reported change will decrease the benefits or make the household ineligible, action must be taken and a notice issued to the client within 10 days of the reported change. *Id.*, p. 8.

There are two types of written notice: adequate and timely. BAM 220 (1/2014), p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). *Id.* A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action. *Id.*, p. 4.

For income increases that result in a benefit decrease, action must be taken and notice issued to the client within the Standard of Promptness (FAP -10 calendar days, FIP/SDA -15 workdays). BEM 505 (July 2015), p. 11. The effective month is the first full month that begins after the negative action effective date. *Id.*

The "10-10-12 Rule" is the unofficial name for the policies identifying why MDHHS must generally wait at least 32 days from the date of a circumstance change resulting in an OI before beginning an OI. The circumstance change in the present began [REDACTED] [REDACTED] Applying the 10-10-12 Rule results in [REDACTED] being the first month an OI can be calculated.

It is found MDHHS established an OI of FAP benefits from [REDACTED] through [REDACTED]. The calculated OI for those benefits months was [REDACTED]. It is found MDHHS established a debt against Respondent for [REDACTED] in over-issued FAP benefits from [REDACTED] through [REDACTED]

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 basis for debt collection against Respondent for [REDACTED] in FAP benefits for the period from [REDACTED] through [REDACTED] and [REDACTED] through [REDACTED]. The MDHHS request to establish a debt against Respondent is **PARTIALLY DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a basis for debt collection against Respondent for [REDACTED] in over-issued FAP benefits for the period from [REDACTED] through [REDACTED]. The MDHHS request to establish a debt against Respondent is **PARTIALLY APPROVED**.

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]
[REDACTED]

[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]