



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 19, 2018
MAHS Docket No.: 18-002232
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; 42 CFR 438.400 to 438.424; 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 April 9, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED], Petitioner's spouse, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist, and [REDACTED], recoupment specialist.

ISSUE

The issue is whether MDHHS established an overissuance (OI) of Food Assistance Program (FAP) benefits against Petitioner.

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. In October 2015, Petitioner married her spouse.
3. From an unspecified time before marriage, Petitioner and her spouse lived together. Petitioner did not report to MDHHS that she and her spouse lived together until November 2016 or later.
4. From December 2015 through November 2016, Petitioner received FAP benefits totaling \$ [REDACTED] based on a FAP group which did not include her spouse.

5. From December 2015 through November 2016, Petitioner received \$ [REDACTED] per month in Retirement, Survivors, and Disability Insurance (RSDI).
6. From December 2015 through October 2016, Petitioner would have received \$ [REDACTED] in FAP benefits had she reported to MDHHS that she lived with her spouse.
7. For November 2016, MDHHS calculated an OI of \$ [REDACTED] in part, based on \$ [REDACTED] in RSDI for Petitioner.
8. On February 5, 2018, MDHHS mailed Petitioner a Notice of Overissuance (Exhibit A, pp. 1-2) informing Petitioner of an overissuance of \$ [REDACTED] based on client error, for the period of December 2015 through November 2016.
9. On March 1, 2018, 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. The Department (formerly known as the Department of Human Services) administers the 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 MDHHS' attempt to recoup benefits as a result of an alleged OI. MDHHS presented a Notice of Overissuance which stated that Petitioner received an alleged OI of \$ [REDACTED] in FAP benefits from December 2015 through November 2016. The stated cause of the alleged OI was Petitioner's error.

MDHHS specifically alleged that Petitioner failed to report living with her spouse at a time when she resided with her spouse. Petitioner contended that an OI of FAP benefits did not occur because she did not live with her spouse during the OI period.

When a client group receives more benefits than it is entitled to receive, the Michigan Department of Health and Human Services (MDHHS) must attempt to recoup the overissuance. BAM 700 (January 2018) p. 1. An overissuance is the amount of benefits issued to the client group... 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.

A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. *Id.* p. 7. Client and Agency errors are not pursued if the estimated amount is less than \$250 per program. *Id.*, p. 9.

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. BEM 212 (October 2015), p. 1. First, determine if they must be included in the group. *Id.* If they are not mandatory group members, then determine if they purchase and prepare food together or separately. *Id.* Spouses who are legally married and live together must be in the same group. *Id.*

MDHHS alleged that Petitioner married her spouse in October 2015. Petitioner testified that she married her spouse in late 2015. Neither Petitioner nor MDHHS provided documentation (e.g. a marriage license) verifying a date of marriage. Given the limited evidence, Petitioner appeared to marry her spouse in October 2015.

Petitioner's spouse testified that he married Petitioner for the "convenience" of trying to remove a family member from Petitioner's household. Petitioner's spouse testified he lived with Petitioner in 2014. He testified that he later moved out of Petitioner's home because his residency in Petitioner's home was causing difficulties to Petitioner's FAP eligibility. He testified that he bought the home next to Petitioner's in approximately 2016 and that he has lived next door to Petitioner for the past three years. Petitioner's testimony was consistent with her spouse's testimony.

During the hearing, Petitioner's spouse presented a driver's license to a MDHHS specialist. The specialist corroborated that Petitioner's spouse's license listed a street address number near Petitioner's street number. The specialist also corroborated that Petitioner's spouse's license listed a street and city that matched Petitioner's address.

Petitioner's spouse's driver's license address tended to verify that he currently lives near or next door to Petitioner. The information was consistent with the testimony of Petitioner and her spouse, but not verification of where Petitioner's spouse lived during the alleged OI period.

During the hearing, Petitioner's spouse was not able to state his current address until he looked at his driver's license. When asked why he needed to read his address rather than state it from memory, Petitioner's spouse testified that he has difficulty memorizing numbers.

MDHHS presented various documents obtained from Petitioner's spouse's employer from the OI period (Exhibit A, pp. 44-50). Various biweekly pays from August 26, 2015, through March 8, 2017, were listed. A copy of Petitioner's spouse's pay check (Exhibit A, p. 46) dated May 29, 2015, listed Petitioner's spouse's address; the address matched Petitioner's address.

The presented employment documents tended to verify that Petitioner's spouse lived with Petitioner in May 2015. May 2015 is before the alleged OI period. The evidence is no more insightful of Petitioner's spouse's address during the alleged OI period than evidence of Petitioner's spouse's current address.

MDHHS presented a copy of a lease agreement listing Petitioner and her spouse as landlords (Exhibit A, pp. 51-54). The effective date of lease was May 3, 2016. The lease listed a single address for Petitioner and her spouse; the address matched Petitioner's current address. Rental payments were stated to "be made payable" to Petitioner and her spouse.

Petitioner attempted to downplay the significance of the lease by testifying that she did not draft the lease; the lease was silent as to who drafted it. Whether Petitioner drafted the lease or not does not change the fact that the lease listed the same address for Petitioner and her spouse. Significant weight is given to the lease because it tended to verify Petitioner's spouse's address during the alleged OI period.

Petitioner's spouse could have provided documentation of the date he purchased the property next door to Petitioner to rebut evidence that he lived with Petitioner; no such documentation was presented. As the only document of Petitioner's spouse's address from the OI period reflected an address matching Petitioner's, it is found that Petitioner lived with her spouse during the OI period. The analysis will proceed to determine what, if any, amount of OI was established.

MDHHS presented a State Online Query (SOLQ) for Petitioner (Exhibit A, pp. 34-36). The SOLQ listed Petitioner's RSDI as \$616 per month for all months from the OI period.

MDHHS presented Benefit Summary Inquiry documents (Exhibit A, pp. 7-8) listing Petitioner's FAP issuances from the alleged OI period. Monthly issuances of \$████ were listed for each benefit month from the OI period.

MDHHS presented an Issuance Summary (Exhibit A, p. 9) and corresponding OI budgets from the OI period (Exhibit A, pp. 10-33). A total OI of \$2,184 was calculated. The budgets factored monthly income for Petitioner of \$████ in RSDI for the months from December 2015 through October 2016; the November 2016 budget factored \$████ in RSDI for Petitioner. All OI budgets factored Petitioner's spouse's income listed on his employment documents. All months factored Petitioner's original issuances of \$████

The evidence established the calculated OI for all months from December 2015 through October 2016. The OI budget for November 2016 listed an RSDI that contradicted Petitioner's RSDI history. The discrepancy in Petitioner's RSDI was significant enough to doubt the accuracy of the OI budget for November 2016 which calculated an OI of \$████. Thus, the total OI alleged will be reduced by \$████ to account for the apparently improper budget.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established an OI of \$2,006 for the months of December 2015 through October 2016. 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 that Petitioner received an OI of \$[REDACTED] in FAP benefits for November 2016. The actions taken by MDHHS are **PARTIALLY REVERSED**.

CG/



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 Department Rep

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]