



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 27, 2018
MAHS Docket No.: 18-004437
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

ORDER OF SUMMARY DISPOSITION

Attorney Libby Benton (P78057), of Legal Services of South Central Michigan, appeared as Representative on behalf of Petitioner [REDACTED].

Assistant Attorney General, Chantal Fennessey (P42805), appeared on behalf of the Department of Health and Human Services (Department or Respondent).

On September 19, 2017, Respondent notified Petitioner that it had overpaid Petitioner \$1,769.00 in Food Assistance Program (FAP) benefits between September of 2016, and August of 2017, as a result of agency error. (Petitioner's Exhibit 1)

Respondent began recouping \$10.00 or 10%, whichever is greater, of Petitioner's FAP benefits each month.

On October 2, 2017, Petitioner asked Respondent to waive or reduce the recoupment of the overissuance because the collection of the funds caused great financial hardship and provided detailed information about her limited income and regular expenses. (Petitioner's Exhibit 2)

On September 19, 2017, the Department notified Petitioner that she was over-issued FAP benefits in the amount of \$1,769.00 for the period of September 1, 2016, through August 31, 2017. The agency error was entered into the automated recovery system and notice was mailed to Petitioner.

A Pre-Hearing Conference was held with Petitioner on October 9, 2017. The reason for the action of the explanation of the budget was discussed at that time.

On September 29, 2017, the Michigan Administrative Hearing System received a request for hearing to contest the Department's negative action.

On November 6, 2017, and November 22, 2017, Petitioner sent a follow-up letter providing more detailed and accurate information about her substantial out-of-pocket medical expenses. (Petitioner's Exhibits 3 and 4)

On December 4, 2017, Respondent denied Petitioner's waiver request, indicating that when an individual is active for FAP benefits the Department will seek recovery of claims for automatic recoupment, and that their repayment at \$10.00 per month is lower than what the Department can do on a compromise. (Petitioner's Exhibit 5)

On December 28, 2017, Petitioner responded to Respondent's denial of the overissuance waiver by requesting that the administrative recoupment be reduced to three years and after three years the remaining balance be eliminated. (Petitioner's Exhibit 6)

On April 24, 2018, the Washtenaw County Department of Health and Human Services received a request for hearing from Petitioner contesting the recoupment.

On May 29, 2018, a telephone Pre-Hearing Conference was held.

On June 21, 2018, Respondent filed a Motion and Brief In Support of Dismissal pursuant to R792.10129l(1)(a),(b) and (c), stating that Petitioner owes the Department \$1,769.00. The Michigan Administrative Hearing System lacks the subject matter jurisdiction to rule on Petitioner's claim. Furthermore, there is no genuine issue as to immunity of fact in Petitioner's brief that state a claim upon which relief can be granted.

On June 21, 2018, Petitioner's Representative filed a Petitioner's Brief in Support of MAHS Jurisdiction, asking this Administrative Law Judge to take jurisdiction over the matter.

Both parties agree that there is no dispute as to material facts in this case. Petitioner was over-issued Food Assistance Program benefits due to agency error. Petitioner feels that she should not have to pay the over-issued benefits back because it was an agency error.

On October 16, 2017, the department advised Petitioner that she could have asked to compromise the date that was established through the administrative hearing process.

On October 31, 2017, Petitioner withdrew her request for an administrative hearing and commenced making payments through the recoupment process.

Petitioner then submitted a request to the Overpayment, Research and Verifications section office seeking to compromise the FAP overissuance. The manager of MDHHS Overpayment, Research and Verification section designated the compromise claim process.

Bridges Administrative Manual (BAM) 725, page 16, addresses compromise claims as follows: MDHHS can compromise, reduce or eliminate an overissuance if it is determined that a household's economic circumstances are such that the overissuance cannot be paid within three years. A request for a policy exception must be made from the Petitioner to the Overpayments, Research and Verification Section Office outlining the facts of the situation and the client's financial hardship. The manager of the MDHHS Overpayment, Research and Verification Section has final authorization on the determination for all compromised claims.

Using its discretion and authority, the Department denied the Petitioner's request for compromise to claim on December 4, 2017.

Per the plain language of BAM 725, this was a final settlement decision, solely within the Department's discretion that is not an issue that is subject to review by the Michigan Administrative Hearing System.

This Administrative Law Judge finds that the Michigan Administrative Hearing System lacks subject matter jurisdiction over the Department's settlement or compromise authority. Thus, the case must be dismissed.

Petitioner's request that this Administrative Law Judge order Respondent/Department to compromise, reduce or eliminate the overissuance of FAP benefits is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Health and Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on Constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

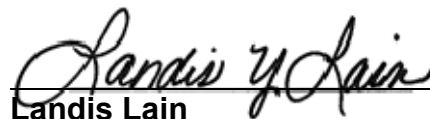
Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

This Administrative Law Judge finds that the Department can consider hardships and compromises when a Petitioner has high out-of-pocket medical expenses, Petitioner is in a nursing home, Petitioner is in an extreme emergency, or cannot pay the debt off within three years, when the balance is over \$1,800.00. Department policy does not give this Administrative Law Judge authority to compel the Department to make a settlement or compromise. The Department has not authorized the Michigan Administrative Hearing System to superimpose jurisdiction over the process of discretionary settlement authority. In this case, the Michigan Administrative Hearing System has no authority to review the compromise settlement process. Because this Administrative Law Judge lacks subject matter jurisdiction, this matter cannot proceed

further and should be this dismissed. Petitioner has failed to state a claim upon which a relief can be granted by the Administrative Law Judge. The debt has been established.

Petitioner's request for hearing must be **DISMISSED** for lack of subject matter jurisdiction and because there is no genuine issue as to any material fact. The petitioner has failed to state a claim upon which a relief can be granted. Therefore, it is so **ORDERED**.

LL/bb



Landis Lain
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) 763-0155; 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

Counsel for Respondent

Chantal B. Fennessey
Department of Attorney General
P. O. Box 30758
Lansing, MI 48909

DHHS Department Rep.

MDHHS-Recoupment
235 S Grand Ave
Suite 1011
Lansing, MI 48909

DHHS

Raina Nichols
22 Center Street
Ypsilanti, MI 48198

Washtenaw (District 20), DHHS

BSC4 via electronic mail

Policy-Recoupment via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Counsel for Petitioner

Elizabeth Benton
420 North Fourth Avenue
Ann Arbor, MI 48104

Petitioner

[REDACTED]
MI [REDACTED]