



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: May 6, 2019
MOAHR Docket No.: 19-002747
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 3-way telephone hearing was held on May 2, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED], Petitioner's daughter, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Richkelle Curney, hearing facilitator, and Swanzetta Wilson, recoupment specialist.

ISSUE

The issue is whether MDHHS properly established a basis for recoupment due to overissued 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. On unspecified dates, Petitioner received driver licenses from the State of Michigan under the names of [REDACTED] (hereinafter, "Name1") and [REDACTED] (hereinafter, "Name2"). Exhibit A, pp. 8-9, 11.
2. From April 2014 through February 2019, Petitioner received monthly Retirement, Survivors and Disability Insurance (RSDI) ranging from \$[REDACTED] to \$[REDACTED] under the name of Name1. Exhibit A, pp. 89-91 and 102-104.

3. From April 2014 through February 2019, Petitioner received monthly RSDI under the name of Wilhelmina Baldwin Name2 ranging from \$[REDACTED] to \$[REDACTED] Exhibit A, pp. 89-91 and 93-95.
4. From the 3rd quarter of 2014 through the 3rd quarter of 2018, Petitioner, under Name2, received employment income from [REDACTED] (hereinafter, "Employer1").
5. From the 4th quarter of 2014 through the 4th quarter of 2015, Petitioner, under Name1, received employment income from [REDACTED] (hereinafter, "Employer2").
6. On July 21, 2014, Petitioner, under Name2, applied for State Emergency Relief (SER). Petitioner reported RSDI of \$1,012. Exhibit A, pp. 22-45.
7. On December 6, 2014, MDHHS mailed Petitioner a Notice of Case Action approving Petitioner, under Name1, for FAP benefits of \$[REDACTED] month. A budget summary stated that the determination factored \$[REDACTED] month in RSDI. Exhibit A, pp. 85-88.
8. On February 23, 2015, Petitioner, under Name1, submitted to MDHHS a Redetermination form regarding FAP benefits. Petitioner reported receiving monthly RSDI of \$[REDACTED] No other income was reported. Exhibit A, pp. 76-81.
9. On December 2, 2015, Petitioner, under Name1, submitted to MDHHS a Redetermination form regarding FAP benefits. Petitioner reported receiving monthly RSDI of \$[REDACTED] No other income was reported. Exhibit A, pp. 67-72.
10. On April 8, 2016, Petitioner, under Name1, submitted to MDHHS an application requesting FAP benefits. Petitioner reported receiving monthly RSDI of \$[REDACTED] No other employment income was reported. Exhibit A, pp. 46-66.
11. From December 2014 through February 2017, MDHHS issued a total of \$[REDACTED] in FAP benefits to Petitioner, under Name1. The benefits factored \$0 employment income and no RSDI issued to Petitioner under Name2.
12. As of February 2017, Petitioner had not reported to MDHHS employment income with Employer1, employment income with Employer2, or RSDI received under Name2.
13. On February 20, 2019, MDHHS calculated that Petitioner received an overissuance totaling \$[REDACTED] in FAP benefits from December 2014 through February 2017. The calculation factored Petitioner's employment income from Employer1, employment income from Employer2, and RSDI issued to Petitioner

under Name2. MDHHS calculated that Petitioner's previous issuances totaled \$[REDACTED] and "correct" issuances totaled \$[REDACTED] Exhibit A, pp. 121-178.

14. On February 20, 2019, MDHHS sent a Notice of Overissuance and Overissuance Summary informing Petitioner of an alleged OI of \$[REDACTED] in FAP benefits issued to Petitioner from December 2014 through February 2017. The overissuance was stated to be due to client-error. Exhibit A, pp. 187-189.
15. On March 4, 2019, Petitioner requested a hearing to dispute the alleged overissuance and/or recoupment. Exhibit A, pp. 3-6.

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 MDHHS' attempted recoupment of \$[REDACTED] in allegedly overissued FAP benefits from December 2014 through February 2017. MDHHS testimony and a Notice of Overissuance stated that the alleged overissuance was caused by Petitioner's failure to report RSDI and employment income from Employer1 and Employer2.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), pp. 1-2. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.* Federal regulations refer to overissuances as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a).

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). MDHHS pursues FAP-related client errors when they exceed \$250. BAM 715 (October 2017) p. 7.

The overissuance period begins the later of the first month when an OI occurred or 12 months before the date the OI was referred to a recoupment specialist. *Id.*, p. 5. The OI ends the month before the benefit is corrected. *Id.* The OI amount is the amount the group actually received minus the amount the group was entitled to receive. *Id.*, p. 6.

MDHHS presented FAP budgets demonstrating how an OI was calculated. The OI budgets calculated that Petitioner's actual issuances totaled \$[REDACTED] which matched the total

issuances listed on Petitioner's benefit history. Exhibit A, pp. 113-119. A total OI of \$[REDACTED] was calculated for the OI period. A recoupment specialist credibly testified that the OI budgets were identical to the budgets used in the original FAP issuances from the alleged OI period other than the addition of Petitioner's RSDI under Name2 and employment income from Employer1 and Employer2.

MDHHS presented an email from Social Security Administration (SSA) staff stating that Petitioner received RSDI under two different names. An email attachment included the amounts of RSDI issued to each name used by Petitioner, along with benefit-issuance months throughout the alleged OI period. Exhibit A, pp. 89-91. The OI budgets properly applied all RSDI issued to Petitioner under Name1 and Name2.¹

MDHHS presented theworknumber.com and quarterly income documentation concerning Petitioner's employment history with Employer1. Exhibit A, pp. 92 and 96-100. The documentation listed Petitioner's pays from Employer1 from the 3rd quarter of 2014 through the 3rd quarter of 2018. Despite Petitioner's lengthier history with Employer1, MDHHS only added \$[REDACTED] month in unreported income to OI budgets from December 2015 through March 2016. The income added by MDHHS to the OI budgets was a true average of Petitioner's income from the 4th quarter of 2015 and a favorable average of Petitioner's pays in the following quarter. The method used in adding employment income was compliant with policy (see BAM 715 (October 2017) p. 8).

MDHHS presented theworknumber.com and quarterly income documentation concerning Petitioner's employment history with Employer2. Exhibit A, pp. 101 and 105-108. An employment history from the 4th quarter of 2014 to the 4th quarter of 2015 was documented. Despite Petitioner's lengthier employment history, MDHHS only factored actual employment income from Employer2 in the benefit months of September 2015 and October 2015. Actual income from Employer2 to Petitioner was factored. The method used in adding employment was compliant with policy (see *Id.*)

The OI budgets notably deprived Petitioner of a 20% income credit for timely reporting employment income.² BEM 556 states that clients who fail to timely report employment income are not entitled to the budget credit. Thus, for the budgets to be correct, MDHHS must establish that Petitioner failed to report income from Employer1 and Employer2.

MDHHS presented reporting forms from Petitioner dated February 23, 2015; December 2, 2015; and April 8, 2016. Petitioner was employed with Employer1 and/or Employer2 as of each date the form was submitted to MDHHS. Petitioner reported no

¹ MDHHS presented a letter from the State of Michigan to Petitioner which stated that Petitioner's driving records under Name1 and Name2 would be combined into one record under Name2. Exhibit A, p. 11. The document was consistent with the overall story alleged that Petitioner fraudulently collected RSDI benefits under two different names.

² MDHHS does not issue a credit for timely reported unearned income. Thus, the analysis does not consider whether Petitioner timely reported receipt of RSDI.

employment income on each form. Petitioner's non-reporting of employment income was consistent with Petitioner's non-reporting of RSDI under Name2 on each form. Given the evidence, MDHHS properly factored Petitioner's income from Employer1 and Employer2 as unreported. Thus, MDHHS properly deprived Petitioner of a budget credit for reporting income when the OI was calculated.

During the hearing, Petitioner testified that she worked her entire life and that she received no more in FAP benefits than she needed and/or deserved. Petitioner's testimony was irrelevant to the establishment of recoupment.³

The evidence established that MDHHS properly calculated that Petitioner received an OI of \$[REDACTED] in FAP benefits due to untimely reported earned and unearned income. Thus, MDHHS established a recipient claim against Petitioner for \$[REDACTED] in overissued FAP benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly established a recipient claim of \$[REDACTED] in FAP benefits overissued to Petitioner from December 2014 through February 2017. The actions taken by MDHHS are **AFFIRMED**.

CG/jaf



Christian Gardocki

Administrative Law Judge

for Robert Gordon, Director

Department of Health and Human Services

³ Following the hearing, Petitioner's daughter emailed additional documents which were not factored because they were submitted following the close of record.

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS Department Rep.

MDHHS-Recoupment

DHHS

Tara Roland 82-17
MDHHS-Wayne-17-Hearings

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

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