



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.: 19-003384
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. The Michigan Department of Health and Human Services (MDHHS) was represented by Lacy Miller, hearing facilitator, and Kurt Sperry, 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. From June 26, 2015, through July 8, 2016, [REDACTED], Petitioner's living-together partner (LTP) received employment income from [REDACTED] (hereinafter, "Employer").
2. On January 14, 2016, Petitioner applied for FAP benefits. Petitioner's application reported a household which included LTP and a minor child. Petitioner reported no household employment income. Boilerplate application language stated that all application information was true and subject to penalties of perjury. Exhibit A, pp. 2-19.

3. On February 8, 2016, MDHHS mailed Petitioner a Notice of Case Action approving Petitioner for FAP benefits beginning January 14, 2016. Boilerplate language stated that clients are to report income changes to MDHHS within 10 days. A budget summary stated that \$0 employment income was factored in the approval for FAP benefits. A Change Report was also mailed which stated that clients could use the form to report changes to MDHHS. Exhibit A, pp. 20-25.
4. On April 12, 2016, MDHHS mailed Petitioner a Wage Match Client Notice requesting information about LTP's employment income with Employer. Exhibit A, p. 28.
5. As of April 12, 2016, Petitioner had not reported to MDHHS LTP's receipt of employment income.
6. From January 2016 through May 2016, MDHHS issued a total of \$[REDACTED] in FAP benefits to Petitioner. The benefits factored \$0 employment income for LTP.
7. On an unspecified date, MDHHS calculated that Petitioner received an overissuance totaling \$[REDACTED] in FAP benefits from January 2016 through May 2016. The calculation factored all information from the original FAP determinations other than the addition of LTP's actual income from Employer which was budgeted as unreported income. MDHHS calculated that Petitioner's previous issuances totaled \$[REDACTED] and "correct" issuances totaled \$0. Exhibit A, pp. 31-41.
8. On March 8, 2019, MDHHS sent a Notice of Overissuance and Overissuance Summary to Petitioner, which stated that Petitioner failed to report LTP's employment income which resulted in an overissuance of \$[REDACTED] in FAP benefits from January 2016 through May 2016. Exhibit A, pp. 42-43.
9. On March 18, 2019, Petitioner requested a hearing to dispute the alleged overissuance. Exhibit A, p. 1.

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 FAP benefits allegedly overissued to Petitioner from January 2016 through May 2016.

MDHHS' testimony and a Notice of Overissuance stated that the alleged overissuance was caused by Petitioner's failure to report employment income for LTP.

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. ¹

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. 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 LTP's income. LTP's past income was obtained from documents submitted by Petitioner following issuance of a Wage Match Client Notice. In compliance with policy, MDHHS budgeted actual pays from LTP's employment. BAM 715 (October 2017) p. 8. The OI budgets calculated that Petitioner's actual issuances totaled \$[REDACTED] which matched the total issuances listed on Petitioner's benefit history. Exhibit A, p. 30. A total OI of \$[REDACTED] was calculated for the OI period.

The OI budgets notably deprived Petitioner of a 20% income credit for timely reporting employment income. 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 employment income.

MDHHS presented Petitioner's application dated January 14, 2016 in which Petitioner LTP as a household member and no household employment income. In April 2016, MDHHS learned that LTP was employed and requested LTP's employment information from Petitioner. Petitioner returned documents completed by LTP's employer which listed regular biweekly pays for LTP since October 2, 2015. LTP's ongoing employment as of Petitioner's application date was further bolstered by employment documentation obtained by OIG from Employer which stated that LTP worked for Employer from

¹ Overissuances caused by an error by MDHHS are also pursued when the OI exceeds \$250 (see BAM 705).

June 2014 through July 2016. The evidence established that Petitioner misreported LTP's employment on the application dated January 14, 2016.

Despite her own misreporting, Petitioner contended that MDHHS was to blame for the failure to budget LTP's income. Petitioner first testified that she provided MDHHS with all of LTP's employment income after LTP's employment ended; per documentation from Employer, LTP's employment ended in July 2016, which was after the OI period. Reporting employment after an OI period does not establish an error by MDHHS. Petitioner then changed her testimony and stated that she realized she did not report LTP's income on her application and attempted to immediately correct the error. Petitioner further testified that she brought LTP's employment documents to MDHHS. A regulation agent testified that Petitioner advised him of the same which prompted him to check Petitioner's case file for submitted employment documents. The regulation agent testified that Petitioner's case file revealed no employment documents from before MDHHS requested the documents via Wage Match Client Notice in April 2016.

Petitioner's claim that she reported employment income for LTP before April 2016 was uncorroborated and contradictory to the evidence. Given the evidence, MDHHS established that Petitioner failed to timely report employment income for LTP. Thus, Petitioner was at fault for the overissuance and MDHHS properly budgeted LTP's income as unreported when calculating the OI.

MDHHS began the OI period in January 2016. Had Petitioner reported LTP's income on the application from January 2016, MDHHS would have budgeted the income beginning January 2016. Thus, MDHHS properly determined the first month of the OI.

The evidence established that Petitioner received an OI of \$[REDACTED] in FAP benefits due to LTP's untimely reported employment income from Employer. 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 January 2016 through May 2016. The actions taken by MDHHS are **AFFIRMED**.

CG/jaf



Christian Gardocki
Administrative Law Judge
for Robert Gordon, 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 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

Erin Bancroft
MDHHS-Clinton-Hearings

DHHS Department Rep.

MDHHS-Recoupment

Petitioner

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

L Bengel