



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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

Date Mailed: July 30, 2019
MOAHR Docket No.: 19-006676
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 July 24, 2019, from [REDACTED] Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Annette Fullerton, recoupment specialist, and Mariah Schaeffer, manager.

ISSUE

The issue is whether MDHHS established a basis for recoupment 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. At all relevant times, Petitioner's household included Petitioner's child, [REDACTED] (hereinafter, "Child") with a date of birth of [REDACTED].
2. From March 2018 through December 2018, Petitioner received a total of \$4,906 in FAP benefits. Exhibit A, pp. 9-10. Petitioner's FAP eligibility included Child as a group member.
3. On or shortly before March 21, 2019, Petitioner told an MDHHS recoupment specialist that Child attended a trade school.

4. On March 21, 2019, MDHHS recalculated Petitioner's FAP eligibility from March 2018 through December 2018 by factoring Child as a disqualified group member due to student status. Child's exclusion from the group resulted in a difference of \$1,720 in FAP benefits. Exhibit A, pp. 10-30.
5. On March 21, 2019, MDHHS sent a Notice of Overissuance to Respondent stating that Respondent received an OI of \$1,720 in FAP benefits due to agency error. Exhibit A, p. 2.
6. On May 21, 2019 Petitioner submitted a hearing request to MDHHS disputing 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. 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 establishment of an OI of \$1,720 in FAP benefits. A Notice of Overissuance dated March 21, 2019, informed Petitioner that the alleged OI of \$1,720 in FAP benefits covered the period from March 2018 through December 2018. Exhibit A, p. 2.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (October 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.*, p. 2. 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 agency errors when they exceed \$250. BAM 705 (October 2018), p. 1.

MDHHS testimony indicated that Petitioner received an OI of FAP benefits due to improperly including Child as a group member. MDHHS presented FAP-OI budgets from March 2018 through December 2018 calculating an OI of \$1,720. Exhibit A, pp. 10-30. MDHHS testimony indicated that the budgets mirrored Petitioner's original FAP budgets but for excluding Child as a group member. MDHHS contended that Child was ineligible to receive FAP benefits during the OI period due to student status.

A person in student status must meet certain criteria in order to be eligible for assistance. A person is in student status if he/she is:

- Age 18 through 49; and
- Enrolled half-time or more in either a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate,
 - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245 (January 2018), pp. 3-4.

In order for a person in student status to be eligible for FAP benefits, he or she must meet one of the following criteria:

- Receiving Family Independence Program benefits
- Enrolled in an institution of higher education as a result of participation in:
 - A JTPA program.
 - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year (i.e., work study).
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate childcare is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does not live with his or her natural, adoptive or stepparent.

Id., pp. 3-5.

A recoupment specialist testified that she spoke to Petitioner on or shortly before March 21, 2019, and that Petitioner told her that Child was attending a trade school. Petitioner 's statement was the primary basis for establishing Child's ineligibility to

receive FAP. Thus, MDHHS interpreted Petitioner's statement about Child as an admission that Child attended trade school at least half-time and that Child already graduated high school.

MDHHS' claim that Child was in student status was hampered by MDHHS' failure to factor Child's employment hours. MDHHS presented verification of Child's work hours for biweekly pay periods ending April 13, 2018, through December 7, 2018. For several of the pay periods (e.g., June 26, 2018; July 12, 2018; August 23, 2018...) and multiple pay months (August 2018, November 2018, and December 2018, Child worked an average of 20 hours/week. If Child worked for at least 20 hours per week in a benefit month, Child would be eligible to receive FAP benefits despite student status.

Concerning MDHHS' belief that Child attended a trade school at least half-time, MDHHS could not provide documentary evidence of the name of the school or Child's amount of attendance. The sole basis of Child's half-time+ attendance was Petitioner's alleged admission during a phone call. MDHHS did not even present documentation of the phone call with Petitioner. MDHHS testimony was also not clear on when Child began attending trade school.

MDHHS also presented negligible evidence that Child was attending trade school after finishing high school. During the hearing, Petitioner had difficulty recalling when Child finished high school before stating that Child graduated high school in [REDACTED]. Petitioner also testified that Child's trade school attendance began when Child was in high school. Petitioner's testimony was corroborated by a MDHHS manager who testified that it was commonplace for students in that area to attend a trade school while attending high school. MDHHS had no evidence of when Child graduated high school. Also, Child's employment not averaging 20 hours until [REDACTED] is consistent with high school attendance during previous months of employment. If Child attended trade school as part of a high school requirement, then Child cannot have been in student status.

Given the evidence, MDHHS failed to establish that Child attended a trade school at least half time. MDHHS also failed to establish that Child attended trade school outside of a high school curriculum. Without adequate proof of Child's trade school attendance half-time or more after high school, MDHHS failed to establish that Child was in student status during the entire alleged OI period. Without establishing Child's student status, MDHHS cannot establish any portion of the \$1,720 alleged OI from March [REDACTED] to December [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 \$1,720 overissuance of FAP benefits against Respondent for the period from March [REDACTED] through December [REDACTED]. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Close the recoupment of the alleged OI of \$1,720 in FAP benefits;
 - (2) Cease any collection actions, if any, associated with the recoupment.
- The actions taken by MDHHS are **REVERSED**.

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

Via First Class Mail
Petitioner

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

Via Electronic Mail
DHHS

Mariah Schaefer
MDHHS-Allegan-Hearings

DHHS Department Rep.

MDHHS-Recoupment

M Holden
D Sweeney