



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]
Date Mailed: December 17, 2019
MOAHR Docket No.: 19-012252
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 December 11, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Julie Barr, recoupment specialist.

ISSUE

The issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner from [REDACTED] 2018 through [REDACTED] 2019.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of [REDACTED] 2018, Petitioner was an ongoing recipient of FAP benefits.
2. On [REDACTED] 2018, Petitioner began employment with [REDACTED] and [REDACTED] (hereinafter, "Employer").
3. On [REDACTED] 2018, MDHHS mailed Petitioner a Notice of Case Action informing Petitioner of an approval of [REDACTED] in FAP benefits beginning [REDACTED] 2018. A summary of budget factors stated that MDHHS factored \$0 in employment income. Boilerplate language stated that clients are to report changes in income to MDHHS within 10 days. Exhibit A, pp. 21-24.

4. From [REDACTED] 2018, through at least [REDACTED] 2019, Petitioner received biweekly income from Employer.
5. On [REDACTED], 2018, Petitioner submitted documentation requesting a change in day care providers.
6. From [REDACTED] 2018 through [REDACTED] 2019, Petitioner received [REDACTED] per month in FAP benefits. Petitioner's FAP eligibility did not factor income from Employer.
7. On [REDACTED], 2019, MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued [REDACTED] in FAP benefits to Petitioner from [REDACTED] 2018 through [REDACTED] 2019 due to client-error. Exhibit A, pp. 49-54.
8. On [REDACTED], 2019, MDHHS received Petitioner's hearing request disputing the alleged OI from [REDACTED] 2018 through [REDACTED] 2019.
9. On [REDACTED] 2019, MDHHS calculated that Petitioner received an overissuance of [REDACTED] in FAP benefits from [REDACTED] 2018 through [REDACTED] 2019 due to agency error. The OI calculations factored the following: Petitioner's actual pays from Employer, actual issuances of [REDACTED] per month, that Petitioner timely reported income from Employer, and "correct" issuances totaling [REDACTED].
10. On [REDACTED], 2019, MDHHS sent an updated Notice of Overissuance to Petitioner stating that MDHHS overissued [REDACTED] in FAP benefits to Petitioner from [REDACTED] 2018 through [REDACTED] 2019 due to agency error.
11. On an unspecified date, the Michigan Office of Administrative Hearings and Rules assigned the docket no. of 19-012252 to Petitioner's dispute of the agency-related OI of [REDACTED].

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' attempt to establish a recipient claim related to allegedly overissued FAP benefits. Exhibit A, pp. 8-9. Petitioner initially disputed MDHHS' attempt to establish an OI totaling [REDACTED] from [REDACTED] 2018 through [REDACTED]

2019 due to Petitioner's error. After Petitioner requested a hearing, MDHHS reduced the total alleged OI to \$[REDACTED]. A Notice of Overissuance dated [REDACTED], 2019, alleged that Petitioner received an OI of [REDACTED] in FAP benefits from [REDACTED] 2018 through [REDACTED] 2019 due to agency error. Exhibit A, pp. 58-63. ¹ The updated OI of \$[REDACTED] for [REDACTED] 2018 and [REDACTED] 2019 is the subject of this hearing decision.

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). Recipient claim amounts not caused by trafficking are calculated by determining the correct amount of benefits for each month there was an OI and subtracting the correct issuance from the actual issuance.² CFR 273.18(c)(1).

Federal regulations require that clients to report income to state agencies administering food programs within 10 days after the income begins. 7 CFR 273.12(a)(2). MDHHS policy properly reflects federal regulations in their policy. BAM 105 (January 2015), p. 7.

At some point after Petitioner received FAP benefits through [REDACTED] 2019 without MDHHS factoring income from Employer, MDHHS obtained Petitioner's employment records. MDHHS presented a Verification of Employment from Employer stating that Petitioner began employment on [REDACTED] 2018. Exhibit A, pp. 26-27. Income records listing Petitioner's gross pay amounts and dates from [REDACTED] 2018, through [REDACTED] 2019 were additionally included. Exhibit A, pp. 28-32.

A recoupment specialist testified that Petitioner was deemed to have reported to MDHHS income from Employer on [REDACTED], 2018. The recoupment specialist testified that Petitioner's specialist had no record of Petitioner's reporting, but one was inferred from Petitioner submitting a written request for a change in day care providers on [REDACTED], 2018. Exhibit A, p. 35-36. Though Petitioner's day care provider documentation did not mention employment, the recoupment specialist considered Petitioner's requested change sufficient to place MDHHS on notice of possible employment income for Petitioner. Thus, MDHHS factored that any FAP benefits overissued to Petitioner in [REDACTED] 2018 and [REDACTED] 2019 were the fault of MDHHS.

¹ A separate Notice of Overissuance, also dated [REDACTED], 2019, alleged that Petitioner received an OI of \$[REDACTED] in [REDACTED] 2018 due to client-error. Administrative hearing docket no. 19-012251 was assigned to Petitioner's dispute of the OI from [REDACTED] 2018.

² Additionally, MDHHS is to subtract any benefits that were expunged (i.e. unused benefits which eventually expire from non-use). MDHHS presented a history of Respondent's FAP expenditures which verified that Respondent spent all FAP benefits issued during the alleged OI period. Exhibit A, pp. 50-65. Thus, expungement is not a factor in calculating the OI amount.

MDHHS presented FAP-OI budgets from [REDACTED] 2018 through [REDACTED] 2019 which demonstrated how an OI was calculated. Exhibit A, pp. 43-47. Each month's FAP-OI budget factored Respondent's actual income from Employer during each benefit month. Unrebutted MDHHS testimony stated that no other eligibility factors were changed from budgets corresponding to Respondent's FAP issuances during the OI period. The budgets factored that Petitioner's actual issuances totaled [REDACTED] during the OI period; Petitioner's actual issuances were properly taken from Petitioner's issuance history. Exhibit A, pp. 19. The budgets credited Petitioner with a 20% employment income credit for timely reporting income. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of [REDACTED] was properly calculated.

MDHHS delayed beginning an overissuance period until [REDACTED] 2018 despite Petitioner's earlier employment with Employer. The delay is compliant with policy which requires beginning the OI period for client-errors in the first full benefit month after allowing time for the client to report changes (see BAM 105), MDHHS to process changes (see BAM 220), and the full negative action suspense period (see *Id.*).³ BAM 715 (October 2017), p. 5.

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.

Petitioner's primary contention was that she should not be held accountable for repayment of overissued FAP benefits when MDHHS was at fault. MDHHS acknowledged that the OI was its own fault and calculated the OI accordingly. As the OI caused by MDHHS' error exceeded \$250, MDHHS may establish a recipient claim. Based on the evidence, MDHHS established a recipient claim against Petitioner for [REDACTED] in FAP benefits overissued to Petitioner from [REDACTED] 2018 through [REDACTED] 2019.

³ For agency-caused errors, the same delay is required except for 10 days for a client to report changes. Application of the delay for an agency-caused error would not change the analysis in the present case.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a recipient claim of [REDACTED] for FAP benefits overissued to Petitioner from [REDACTED] 2018 through [REDACTED] 2019 due to agency-error. The MDHHS request to establish a recipient claim of [REDACTED] against Petitioner is **APPROVED**.

CG/tm



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 Department Rep.

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

DHHS

Mona LaBerge
2612 10th Street
Menominee, MI
49858

Petitioner

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

cc: FAP: M. Holden; D. Sweeney
Menominee AP Specialist (1)