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GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: February 7, 2020
MOAHR Docket No.: 19-013604
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 January 29, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Patrick Lynaugh, recoupment specialist, and Julie McLaughlin, hearing facilitator.

ISSUE

The issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly overissued to 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. As of January 2016, Petitioner was an ongoing recipient of FAP benefits. Petitioner's household included her four minor children.
2. From January 2016 through December 2016, Petitioner received \$171 per month in FAP benefits through the Michigan Combined Application Project (MiCAP). Petitioner's FAP eligibility was based on a group size of one person, an unspecified rent, and an unspecified utility obligation. Exhibit A, p. 8.
3. As of January 2016, Petitioner reported to MDHHS a monthly rent of \$350. Petitioner also received at least \$1 in LIHEAP payments in 2015.

4. On February 2, 2017, an overissuance referral was made to a recoupment specialist concerning FAP benefits allegedly overissued to Petitioner.
5. On December 2, 2019, MDHHS calculated that Petitioner received an overissuance of \$3,881 in FAP benefits from January 2016 through December 2016 due to agency-error. Petitioner's "actual" pays were the sum of FAP benefits issued to Petitioner and her children. MDHHS calculated Petitioner's "correct" issuances based on the following: Petitioner's ineligibility under MiCAP, a \$0 housing obligation and a utility credit only for telephone. Additionally, MDHHS factored FIP benefits issued to Petitioner. Exhibit A, pp. 11-35.
6. On December 2, 2019, MDHHS sent a Notice of Overissuance stating that Petitioner received \$3,881 in overissued FAP benefits from January 2016 through December 2016 due to agency-error.
7. On [REDACTED], 2019, Petitioner requested a hearing to dispute the alleged overissuance.

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. A Notice of Overissuance dated December 2, 2019, stated that Petitioner received \$3,881 in overissued FAP benefits from January 2016 through December 2016 due to agency-error. Exhibit A, pp. 1-6.

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.¹ CFR 273.18(c)(1).

¹ 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

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

During the alleged overissuance period, Petitioner received FAP benefits under MiCAP and her four children received benefits under a separate benefit case. MDHHS alleged that Petitioner received overissued FAP benefits because Petitioner was ineligible for MiCAP and received more benefits than she should have from her eligibility. In other words, the sum of FAP benefits issued to Petitioner through MiCAP and to her children exceeded the amount of benefits that Petitioner would have received if MDHHS properly issued them under a single case. Petitioner's eligibility under MiCAP will be first evaluated.

MiCAP is a Food Assistance demonstration project approved by the Food and Nutrition Service. BEM 618 (January 2019) p. 1. MiCAP eligibility requires the following:

- Age 18 or older.
- Receives SSI income and no other type of income.
- Meets the Social Security Administrations (SSA) definition of independent living (Living arrangement code A).
- Resides in Michigan.
- Purchases and prepares food separately from other household members. *Id.*

During the alleged OI period, it was not disputed that Petitioner lived with her four minor children. Policy requires that parents and their children under 23 years of age in the same household to be included in the same FAP group; in other words, parents and their children under 22 years purchase and prepare food together. BEM 212 (January 2017) p. 1. As Petitioner's four children were all under 22 years and lived with Petitioner, Petitioner could not have bought and prepared food separately from other household members. Thus, Petitioner was ineligible to receive FAP benefits under MiCAP.

Petitioner's ineligibility for FAP benefits under MiCAP would not render her ineligible to receive FAP benefits. Petitioner's FAP eligibility should have been determined based on a group that included her four children. Thus, in determining Petitioner's "correct" issuances, MDHHS should have factored a group size of 5 persons. Presented FAP-OI budgets from January 2016 through December 2016 were based on a group size of five persons.

MDHHS alleged an OI period beginning January 2016. The OI period was starkly old for an OI based on agency-error.

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.

The OI period begins the first month when the benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the recoupment specialist, whichever 12 month period is later. BAM 705 (October 2018) p. 5. MDHHS testimony asserted an OI referral date from February 2017. Based on an OI referral date in February 2017, MDHHS can only go back to February 2016 for an OI based on agency-error. Thus, MDHHS' inclusion of January 2016 as part of the OI period was improper.

From February 2016 through September 2016, MDHHS alleged that Petitioner received at least overissuances of \$382 each month. By herself, Petitioner received \$171 in monthly FAP benefits throughout the alleged OI period. An OI based solely on a person's MiCAP ineligibility would not likely exceed the amount of FAP benefits issued to the person ineligible for MiCAP. The OI amounts alleged by MDHHS were suspiciously large for the allegations. Indeed, during the hearing, MDHHS acknowledged errors within its FAP-OI budgets.

Each benefit month's corresponding FAP-OI budget factored a rent of \$0 for Petitioner. Additionally, only a telephone credit of \$33 was factored. A housing expense of \$0 and only a telephone credit could be justified if Petitioner failed to report housing expenses or additional utility obligations. Petitioner's application dated January 4, 2016 reported a housing expense of \$300; thus, MDHHS cannot claim that Petitioner failed to report a housing expense greater than \$0. MDHHS further acknowledged that Petitioner verified her housing obligation. A reported and verified housing obligation should be factored into a client's FAP eligibility (see BEM 556). Thus, MDHHS miscalculated the OI by not crediting Petitioner with housing expenses.


MDHHS also may have erred in crediting Petitioner only with a telephone obligation, but this is less clear. Petitioner's application dated January 4, 2016 did not report additional utility obligations, but Petitioner might not have needed to in order to receive a credit within the FAP-OI budgets. MDHHS testified that Petitioner received a \$1 LIHEAP payment in 2015. Based on Petitioner's LIHEAP payment, MDHHS testimony indicated that Petitioner should be eligible to receive a full heat credit because of the LIHEAP payment; as of 2016, the standard heat credit was \$539. RFT 255 (October 2015) p. 1. It appears that Petitioner is not eligible for a heat credit because only LIHEAP payments exceeding \$20 from the prior year qualify clients for a heating credit. BEM 554 (October 2015) pp. 18-19. Whether Petitioner is or is not eligible for a heat credit should be evaluated by MDHHS if an updated overissuance is pursued.

Given the evidence, MDHHS failed to establish that Petitioner was not eligible to receive a housing credit from January 2016 through December 2016, concerning an alleged OI. MDHHS also failed to establish that Petitioner was ineligible to receive a heating credit. Additionally, MDHHS failed to establish that an OI based on agency error may be pursued for an overissuance referral made in February 2017. The failures justify denial of the entire OI alleged by MDHHS.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly calculated an OI against Petitioner from January 2016 through December 2016. The OI of \$3,881 sought against Petitioner is **DENIED**.

CG/cg



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 Email:

MDHHS-Muskegon-Hearings
MDHHS-Recoupment-Hearings
M. Holden
D. Sweeney
BSC3- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

