



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: February 7, 2020
MOAHR Docket No.: 20-000076
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 Walita Randle, recoupment specialist, and Aundrea Jones, 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 October 2015, Petitioner was an ongoing recipient of FAP benefits and a change reporter.
2. From October 16, 2015, through at least April 19, 2016, Petitioner received biweekly income from [REDACTED] (hereinafter, "Employer"). Exhibit A, p. 30.
3. From December 2015 through April 2016, Petitioner received a total of \$2,693 in FAP benefits. Petitioner's FAP eligibility did not factor income from Employer. Exhibit A, p. 15.

4. On April 18, 2016, MDHHS mailed a Wage Match Client Notice to Petitioner concerning income from Employer. Exhibit A, p. 29.
5. As of April 18, 2016, Petitioner had not reported to MDHHS income from Employer.
6. On December 13, 2019, MDHHS calculated that Petitioner received an overissuance of \$1,818 in FAP benefits from December 2015 through April 2016 due to client-error. The overissuance (OI) calculation factored the following: Petitioner's actual pays from Employer, FAP issuances totaling \$2,693, and that Petitioner failed to timely report income from Employer. Exhibit A, pp. 16-26.
7. On December 13, 2019, MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued \$1,818 in FAP benefits to Petitioner from December 2015 through April 2016 due to client-error.
8. On January 6, 2020, 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. Exhibit A, pp. 4-5. A Notice of Overissuance dated December 13, 2019, stated that Petitioner received \$1,818 in overissued FAP benefits from December 2015 through April 2016 due to client-error. Exhibit A, pp. 6-11.

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).

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 client errors when they exceed \$250. BAM 715 (October 2017), p. 7.

MDHHS specifically alleged that Petitioner received an OI of FAP benefits by failing to timely report income from Employer. To establish an OI, MDHHS must establish that Petitioner had an obligation to report income from Employer.

Not all clients are required to report changes in income. Certified change reporting households are required to report to MDHHS various changes in household circumstances. Changes required to be reported include the starting of employment income. 7 CFR 273.12(a). Change reporters differ from simplified reporters who are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size; no other reporting is required. BAM 200 (December 2013) p. 1. Simplified reporters are groups with countable earnings. *Id.*, p. 1.

A Redetermination submitted to MDHHS by Petitioner on September 28, 2015, reported no employment income. Exhibit A, pp. 31-36. A reporting of no employment income in September 2015 is consistent with being a change reporter in October 2015. During the hearing, Petitioner did not allege that she was a simplified reporter. Given the evidence, Petitioner was a change reporter as of October 2015. As a change reporter, Petitioner was obligated to report the start of income from Employer.

MDHHS presented FAP-OI budgets from December 2015 through April 2016 demonstrating how an OI was calculated. Exhibit A, pp. 16-26. In compliance with policy, the FAP-OI budget factored Petitioner's actual income from Employer (see Exhibit A, p. 30) for each benefit month. BAM 715 (October 2017) p. 7. MDHHS testimony credibly stated that no other variables were changed from the original FAP budgets. The FAP-OI budgets factored that Petitioner received \$2,683 in FAP benefits during the OI period; the total FAP issuances matched documentation listing Petitioner's issuances during the alleged OI period. Exhibit A, p. 15. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$1,818 was calculated.

The FAP-OI budget notably deprived Petitioner of a 20% income credit for timely reporting employment income. BEM 556 states that clients who fail to report employment income are not entitled to the credit. Thus, for the FAP-OI budgets to be correct, MDHHS must establish that Petitioner failure to report employment income caused the OI.

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 Petitioner's FAP expenditures which verified that Petitioner 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 testified that Petitioner's income from Employer was discovered only after a wage match. Wage match reports are generated when information from data exchanges does not match information on a client's case (see BAM 802). MDHHS' testimony was consistent with a Wage Match Client Notice dated April 18, 2016, which requested from Petitioner verification of her income from Employer. Exhibit A, pp. 29-30. MDHHS received the Wage Match Client Notice from Petitioner on May 3, 2016. This evidence was consistent with a reporting of employment income by Petitioner after the OI period.

MDHHS presented documentation of comments made by MDHHS workers concerning Petitioner's case. Exhibit A, pp. 12-13. If Petitioner reported income to MDHHS, and a worker documented the reporting, the documenting would be reflected on the presented documentation. Notably absent from the documentation was a reference to a reporting of income by Petitioner before or during the OI period.

Given the evidence, Petitioner did not report to MDHHS earlier than May 3, 2016, receipt of income from Employer. Thus, MDHHS properly deprived Petitioner of a 20% credit for timely reporting income in the FAP-OI budgets.

MDHHS delayed beginning an overissuance period until December 2015 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.*). BAM 715 (October 2017), p. 5.

The evidence established that Petitioner's failure to report employment income resulted in \$1,818 in FAP benefits overissued to Petitioner from December 2015 through April 2016. Thus, MDHHS established a recipient claim of \$1,818 against Petitioner.

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 \$1,818 for FAP benefits overissued to Petitioner from December 2015 through April 2016 due to client-error. The MDHHS request to establish a recipient claim of \$1,818 against Petitioner is **APPROVED.**

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-Wayne-18-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

