



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.: 20-000077  
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. Domonique Hightower, specialist, participated as an observer.

### **ISSUES**

The first issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility.

The second issue is whether MDHHS established a recipient claim related to 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 August 2018, Petitioner was an ongoing recipient of FAP benefits. Additionally, Petitioner received \$1,121 in monthly gross Retirement, Survivors, Disability Insurance (RSDI).

2. On August 30, 2018, Petitioner submitted a Redetermination to MDHHS. Petitioner reported having no medical expenses. Petitioner also reported no changes to housing expenses. Exhibit A, pp. 47-54.
3. In December 2018, Petitioner received \$192 in FAP benefits. Petitioner's FAP eligibility factored the following: \$8,431 in monthly medical expenses, RSDI of \$1,121, a housing obligation of \$825, and an obligation for heating/cooling.
4. From January 2019 through December 2019, Petitioner's monthly gross RSDI increased to \$1,152
5. From January 2019 through November 2019, Petitioner received a total of \$2,116 in FAP benefits. Petitioner's FAP eligibility factored the following: \$8,431 in monthly medical expenses, a housing obligation of \$825, and an obligation for heating/cooling. Through July 2019, Petitioner's income was budgeted as \$1,121, and after July 2019, Petitioner's income was budgeted as \$1,152.
6. On August 9, 2019, Petitioner reported to MDHHS no changes to his medical, housing, or utility expenses.
7. On October 28, 2019, MDHHS determined Petitioner was eligible to receive \$16 in FAP benefits beginning December 2019. The determination factored a heating/utility (h/u) credit. Exhibit B, pp. 1-5.
8. On an unspecified date, Petitioner reported to MDHHS that he has been homeless since at least December 2018. Petitioner reported that he pays for a portion of his wife's housing and/or utility expenses, but that he stays at the residence no more than twice per week.
9. On December 16, 2019, MDHHS calculated that Petitioner received an overissuance of \$2,126 in FAP benefits from December 2018 through November 2019. Each month's alleged overissuance factored \$0 medical expenses, \$0 housing expenses, and no utility obligations. The December 2018 OI was based on RSDI of \$1,121; from January 2019 through November 2019, the OI factored \$1,152 in monthly RSDI. Exhibit A, pp. 15-39,
10. On December 16, 2019 MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued \$2,126 in FAP benefits to Petitioner from December 2018 through November 2019 due to agency-error.
11. On January 3, 2020, Petitioner verbally requested a hearing to dispute the alleged overissuance and FAP eligibility.

## **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 verbally requested a hearing, in part, to dispute his ongoing FAP eligibility.<sup>1</sup> A Notice of Case Action dated October 28, 2019, stated that Petitioner was eligible to receive \$16 in monthly FAP benefits beginning December 2019.

MDHHS provided FAP budget documents listing all relevant FAP benefit factors. Exhibit B, pp. 6-8. During the hearing, all relevant factors were discussed with Petitioner. BEM 556 provides the calculations and relevant budget factors for determining a group's eligibility.

MDHHS factored a benefit group that only included Petitioner. Petitioner did not dispute his benefit group size.

MDHHS factored \$1,152 in monthly unearned income for Petitioner. Documentation from a data exchange with the Social Security Administration listed Petitioner's 2019 monthly RSDI as \$1,152. Exhibit A, pp. 42-43. Petitioner's testimony acknowledged that he received \$1,152 in monthly RSDI during 2019.

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: childcare, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS also considers the medical expenses above \$35 for each SDV group member(s) and an uncapped excess shelter expense. Countable expenses are subtracted from a client's monthly countable income.

At the time of the disputed benefit month, Petitioner was senior and/or disabled. Petitioner's testimony acknowledged having no child support or dependent care expenses. During the hearing, Petitioner alleged that he has medical expenses which he reported to MDHHS; MDHHS alleged otherwise.

MDHHS presented Petitioner's Redetermination form dated August 30, 2018. Exhibit A, pp. 47-54. Petitioner left blank a section asking him to list medical expenses. MDHHS credibly testified that the Redetermination form was the last reporting form returned by Petitioner which would have asked Petitioner to list medical expenses. Additionally

---

<sup>1</sup> Clients may verbally request hearings concerning FAP benefits. BAM 600 (July 2019) p. 2.

Petitioner reported no changes to his ongoing medical expenses on a Mid-Certification Contact Form dated August 9, 2019. Exhibit A, pp. 44-46. Given the evidence, Petitioner did not report ongoing medical expenses to MDHHS. Thus, Petitioner is not entitled to a credit for medical expenses on his FAP budget.

Petitioner's FAP benefit group size justifies a standard deduction of \$161 (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. After subtracting countable child support, dependent care, and medical expenses, the standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. Subtracting the standard deduction and countable expenses from Petitioner's income results in an adjusted gross income of \$991.

Concerning housing costs, Petitioner testified that he is homeless, but he is still responsible for a housing obligation. He testified that he cannot permanently live with his wife due to relationship friction, however, he will spend the night at her residence around twice per week. Petitioner testified that he spends most of his nights at the home of family or friends. Petitioner testified that he feels morally responsible to pay for a portion of his wife's housing and utility costs. Petitioner contended that his payments for his wife's housing and utility costs should be factored in his FAP eligibility.

MDHHS is to allow a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554 (October 2019) p. 3. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. *Id.*

An implied requirement for a housing expense credit is that the expense be for the benefit group's residence. By not living at the residence where he claims an obligation for housing costs, Petitioner is not entitled to a housing expense credit.

Despite Petitioner's homelessness, MDHHS credited Petitioner with the heating/utility (h/u) standard of \$518. Generally, the h/u credit covers all utility expenses and is the maximum credit available to clients.<sup>2</sup> Adding Petitioner's housing and utility credits results in a total shelter obligation of \$518.

MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation. Petitioner's excess shelter amount is \$23 (rounding up to nearest dollar).

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. The result is a net income of

---

<sup>2</sup> MDHHS allows additional credits for "actual utility expenses". Such expenses are only allowed for utility installation charges, water well installation and maintenance, and septic installation and maintenance. BEM 554 (October 2019) p. 15. There was no evidence of applicable exceptions.

\$968. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income, Petitioner's proper FAP benefit issuance for December 2019 is \$16; the same issuance was calculated by MDHHS. Thus, MDHHS properly determined Petitioner's FAP eligibility.

Petitioner also verbally requested a hearing to dispute MDHHS' attempt to establish a recipient claim related to allegedly overissued FAP benefits. A Notice of Overissuance dated December 13, 2019, stated that Petitioner received \$2,126 in overissued FAP benefits from December 2018 through November 2019 due to agency-error. Exhibit A, pp. 6-11. Exhibit A, pp. 4-9.

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.<sup>3</sup> 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 agency errors when they exceed \$250. BAM 715 (October 2017), p. 7.

MDHHS presented FAP-OI budgets from December 2018 through November 2019 demonstrating how an OI was calculated. Exhibit A, pp. 15-39. The FAP-OI budgets factored that Petitioner received \$2,308 in FAP benefits during the OI period; the total FAP issuances matched documentation listing Petitioner's issuances during the alleged OI period. Exhibit A, pp. 13-14. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$2,126 was calculated. In calculating an OI, MDHHS changed four budget factors from Petitioner's original FAP budgets: income, medical expenses, housing expenses, and utility credits.

In the FAP-OI budgets, MDHHS factored RSDI of \$1,121 in December 2018, and a monthly RSDI of \$1,152 from January 2019 through November 2019. MDHHS alleged that Petitioner's FAP issuances from January 2019 through June 2019 factored RSDI of \$1,121. MDHHS presented documentation from the Social Security Administration of Petitioner's past RSDI payments. Exhibit A, pp. 42-43. In 2018, Petitioner received \$1,121 per month, and in 2019, Petitioner received \$1,152; Petitioner did not allege otherwise. Given the evidence, MDHHS properly budgeted Petitioner's RSDI in the OI budgets.

---

<sup>3</sup> 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.

In the updated FAP-OI budgets, MDHHS credited Petitioner with \$0 medical expenses. From December 2018 through November 2019, MDHHS alleged that Petitioner received FAP benefits based on incorrectly budgeted monthly medical expenses of \$8,431.20. The figure of \$8,431 derives from Petitioner's medical expenses in 2012 and 2013, which included a medical bill of \$6,824. Exhibit A, p. 64. For ongoing FAP benefits, MDHHS is to estimate a client's medical expenses for the benefit period. BEM 554 (October 2019) p. 8. There was no evidence supporting that Petitioner's \$8,000+ medical expenses from 2012 and 2013 continued during the OI period. Given the evidence, MDHHS properly removed Petitioner's 2012 and 2013 expenses from his budgets during the OI period.

As noted in the above analysis, Petitioner did not report any ongoing medical expenses on a Redetermination form dated August 30, 2018, and he reported no changes to his medical expenses on a Mid-Certification Contact Form dated August 9, 2019. The evidence supports that Petitioner had no countable medical expenses from December 2018 through November 2019. Thus, MDHHS properly budgeted Petitioner's medical expenses to be \$0.

MDHHS additionally removed Petitioner's housing expense from all FAP-OI budgets. An email from a supervisor to a recoupment specialist stated that Petitioner reported that he was homeless beginning August 2018 through June 2019. Exhibit A, p. 40. Additionally, the recoupment specialist documented on October 28, 2019, that she also spoke with Petitioner who reported that he was homeless, kept his belongings in a storage facility, and only stayed at an address with his wife twice per week. Exhibit A, p. 10. Given the evidence, MDHHS properly budgeted Petitioner's housing expenses as \$0 throughout the OI period.

Lastly, MDHHS changed Petitioner's utility credits from a \$518 h/u credit to \$0. MDHHS stated the basis for the change was Petitioner's acknowledgement of homelessness. By budgeting no utility credits for Petitioner during the OI period, MDHHS essentially contended that homeless persons are entitled to housing credits.

FAP groups who are at redetermination and have received a LIHEAP payment or a LIHEAP payment was made on their behalf in an amount greater than \$20 in the certification month or in the immediately preceding 12 months prior to the certification month are eligible for the h/u standard. BEM 554 (October 2019) p. 5. Notably, homelessness does not disqualify Petitioner for the credit. Also notable is that MDHHS credited Petitioner with the full h/u standard in his ongoing FAP eligibility despite the same housing circumstances throughout the OI period.

Even if Petitioner was not entitled to a h/u credit, homelessness does not disqualify some from all utility credits. Specifically, homelessness does not disqualify clients from receiving a telephone credit. *Id.*, p. 22. For all FAP-OI budgets, MDHHS gave Petitioner no utility credits. MDHHS presented insufficient evidence to justify issuing no utility credits to Petitioner.<sup>4</sup>

---

<sup>4</sup> Petitioner's Redetermination form dated August 30, 2018 reported no changes to housing or utility expenses. A reporting of no change in expenses does not equate to a reporting of having no expenses.

Given the evidence, MDHHS did not justify issuing no utility credits to Petitioner in the FAP-OI budgets. Because MDHHS did not establish that Petitioner was not entitled to a utility credit for any months from the OI period, an order denying the entire OI amount is appropriate.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner's FAP eligibility beginning December 2019. Concerning Petitioner's ongoing FAP eligibility, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly failed to establish an OI of \$2,126 for FAP benefits against Petitioner. Concerning establishment of the alleged \$2,126 overissuance from December 2018 through November 2019, establishment of the OI 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-Wayne-18-Hearings  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MOAHR

**Petitioner – Via First-Class Mail:**

