



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: March 19, 2020
MOAHR Docket No.: 20-000941
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 March 9, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED], Petitioner's community health worker, of District Health #10 testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Dawn McKay, recoupment specialist, and Patty Marx, manager.

ISSUE

The issue is whether MDHHS established a recipient claim of \$1,098 related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner from July 2019 through January 2020.

FINDINGS OF FACT

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

1. On [REDACTED] 2019, Petitioner applied for FAP benefits. Petitioner reported a \$275 weekly income from short-term disability (STD).
2. From July 2019 through January 2020, Petitioner received a total of \$1,209 in FAP benefits. For each benefit month, MDHHS calculated Petitioner's FAP eligibility based on a monthly gross income of \$275 from STD.

3. From July 2019 through January 2020, Petitioner received the following gross monthly income from STD:

July 2019	\$1,100.00
August 2019	\$1,375.00
September 2019	\$1,100.00
October 2019	\$1,100.00
November 2019	\$1,100.00
December 2019	\$1,100.00
January 2020	\$1,100.00
4. In January 2020, an overissuance referral was made regarding improper budgeting of Petitioner's STD income.
5. On January 30, 2020, MDHHS calculated that Petitioner received an overissuance of FAP benefits from July 2019 through January 2020 totaling \$1,098. Petitioner's correct issuances from July 2019 through January 2020 were calculated to be \$111. The OI was calculated using all budget factors from the original FAP budgets other than adding Petitioner's actual STD income for each benefit month.
6. On January 23, 2020, MDHHS mailed Petitioner a Notice of Overissuance stating that Petitioner received \$1,098 in overissued FAP benefits from July 2019 through January 2020 due to agency-error.
7. On January 29, 2020, Petitioner requested a hearing to dispute the alleged OI of \$1,098.

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 an OI related to allegedly overissued FAP benefits. Exhibit A, p. 1. A Notice of Overissuance dated January 22, 2020, alleged that Petitioner received an OI of \$1,098 in FAP benefits from July 2019 through January 2020 due to agency error. Exhibit A, pp. 1-2.

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). 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 agency errors when they exceed \$250. BAM 705 (October 2018), p. 1.

Clients requesting hearings disputing agency-error overissuances typically contend that they should not be required to repay an overissuance caused by MDHHS’ error. As noted above, MDHHS may pursue agency caused OIs if the amount exceeds \$250; there is no maximum limit to the amount of OI that may be recouped. Thus, MDHHS may establish an OI against Petitioner, if the OI is established to exceed \$250.

Agency-related OIs are restricted in how far MDHHS may go back to establish an OI. The OI period for agency-related errors begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the RS, whichever period is later. *Id.*, p. 5. In the present case, MDHHS alleged an OI period from July 2019 through January 2020. Based on an overissuance referral date in January 2020, MDHHS can pursue the alleged OI from July 2019

MDHHS alleged that Petitioner’s OI was caused by improper budgeting of Petitioner’s STD income. Petitioner correctly reported on his application dated [REDACTED] 2019, that he received weekly STD income of \$275. Exhibit A, pp. 2-9. Additionally, Petitioner sent MDHHS pay documents verifying that he received \$275 in weekly STD. Despite Petitioner’s proper reporting, MDHHS issued FAP benefits to Petitioner from July 2019 through January 2020 based on a monthly income of \$275. MDHHS’ error was verified by the original FAP budgets corresponding to the OI period. Exhibit A, p. 17-30.

MDHHS presented FAP-OI budgets from July 2019 through January 2020 which demonstrated how an OI was calculated. Exhibit A, pp. 31-45. In accordance with policy, each FAP-OI budget factored Petitioner’s actual income (Exhibit A, p. 14) from STD. *Id.*, p. 8. A recoupment specialist credibly testified that no other eligibility factors (income, expenses, and group size) were changed from budgets corresponding to Petitioner’s original FAP issuances. As verified from Petitioner’s benefit history, the budgets factored Petitioner’s actual FAP issuances from the OI period. Exhibit A, p. 16. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$1,098 was properly calculated.

¹ Additionally, MDHHS is to subtract any benefits that were expunged (i.e. unused benefits which eventually expire from non-use). There was no evidence that any of Petitioner’s FAP benefits were expunged.

The evidence established that Petitioner received an OI of \$1,098 in FAP benefits from July 2019 through January 2020. The evidence further established that Petitioner was blameless and that the OI was arrantly caused by MDHHS' error. Nevertheless, the evidence established a recipient claim against Petitioner for \$1,098.

Petitioner should be aware of how MDHHS pursues recoupment of recipient claims. Overissuances on active programs are repaid by lump-sum cash payments or administrative recoupment (benefit reduction).² BAM 725 (October 2017) p. 5. For lump-sum payments, payments can be made at the local MDHHS office or to Cashier's Unit, P.O. Box 30259, Lansing, MI 48909. *Id.* For claims based on agency error, MDHHS recoups ongoing monthly FAP benefits at a rate of the greater of 10% of monthly benefits or \$10. Clients can also arrange for repayment of recipient claims.

² Additionally, monthly cash payments can be used to repay claims when ordered by courts or when processed by the Office of Attorney General.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly established a recipient claim of \$1,098 for FAP benefits overissued to Petitioner from July 2019 through January 2020 due to agency-error. The actions taken by MDHHS are **AFFIRMED**.

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-Manistee-Hearings
MDHHS-Recoupment
M. Holden
D. Sweeney
BSC1- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

