



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
██████████
████████████████████

Date Mailed: March 19, 2020
MOAHR Docket No.: 20-001209
Agency No.: ██████████
Petitioner: ██████████

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 12, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. ██████████, Petitioner's spouse (hereinafter, "Spouse"), testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Swanzetta Wilson, recoupment specialist. ██████████ participated as an Arabic-English translator.

ISSUES

The first issue is whether MDHHS established a recipient claim related to \$██████ in Food Assistance Program (FAP) benefits allegedly overissued to Petitioner from October 2014 through April 2016 due to client-error.

The second issue is whether MDHHS established a recipient claim related to \$██████ in FAP benefits allegedly overissued to Petitioner from November 2015 through October 2016 due to agency-error.

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 ██████████, 2014, MDHHS received Petitioner's application requesting FAP benefits. Petitioner's reported household included Spouse. Petitioner reported that Spouse received employment income.

2. From August 2014, through at least October 2016, Spouse received weekly employment income from [REDACTED] (hereinafter, "Employer")
3. From November 2015 through October 2016, MDHHS issued \$[REDACTED] in FAP benefits to Petitioner. The benefit determinations did not factor Spouse's earnings from Employer.
4. On October 25, 2016, an overissuance referral was made to MDHHS' recoupment unit concerning unbudgeted employment income for Spouse.
5. On February 7, 2020, MDHHS calculated that Petitioner received an overissuance of \$[REDACTED] in FAP benefits from October 2014 through April 2015. In calculating the OI, MDHHS factored Spouse's income from Employer as unreported.
6. On February 7, 2020, MDHHS calculated that Petitioner received an overissuance of \$[REDACTED] in FAP benefits from November 2015 through October 2016 due to agency-error. The overissuance (OI) calculation factored the following: actual issuances totaling \$[REDACTED], correct issuances totaling \$[REDACTED], Spouse's actual pays from Employer, and that employment income was reported.
7. On February 7, 2020, MDHHS mailed Petitioner notice of an alleged OI of \$[REDACTED] in FAP benefits from October 2014 through April 2015 due to client error.
8. On February 7, 2020, MDHHS mailed Petitioner notice of an alleged OI of \$[REDACTED] in FAP benefits from November 2015 through October 2016 due to agency error.
9. On [REDACTED], 2020, Petitioner requested a hearing to dispute the alleged overissuances.
10. On March 12, 2020, during an administrative hearing, MDHHS acknowledged that the OI of \$[REDACTED] was incorrectly calculated.

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 two claims related to allegedly overissued FAP benefits. Exhibit A, pp. 7-9. When she requested a hearing, Petitioner also submitted documents agreeing to repay the OIs. Exhibit A, pp. 4-5.

MDHHS sought dismissal of Petitioner's hearing request based on her signed agreement to repay benefits. The context of Petitioner's signed repay agreement merits consideration.

Petitioner testified that she signed the repay agreements, but she really did not understand what she was signing. Notably, Petitioner's and her spouse's native language is Arabic. For the hearing, Petitioner and Spouse both required a translator. Thus, Petitioner's claimed failure to understand the consequence of signing repay agreements was credible.

Also notable is that Petitioner submitted repay agreements with her hearing request disputing the OIs. A hearing request disputing the OIs directly contradicts Petitioner's signed repay agreements. Based on the contradictory documents, MDHHS should have been aware that Petitioner might not have intended to accept the OIs without further dispute.

It is also worth considering that the signed repay agreements are not analogous to contracts. A basic principle of law is that contracts should generally not be overturned by courts. Contracts, unlike repay agreements are negotiated, relied on, and offer each side some type of obligation and benefit. Unlike a contract, Petitioner signed the repay agreements without negotiation, and she received no discernible benefit by signing them. Also, MDHHS did not experience any unfair harm from relying on the repay agreements.

Given the evidence, Petitioner's repay agreements were not valid. Thus, Petitioner is entitled to dispute the alleged OIs. The analysis will proceed to the substance of Petitioner's hearing request disputing the alleged OIs.

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).

Alleged OI of ██████ from October 2014 through April 2015

MDHHS alleged that Petitioner received an OI of ██████ from October 2014 through April 2015 due to a client-error. A Notice of Overissuance dated February 7, 2020, stated that the OI was caused by Petitioner's failure to timely report Spouse's income from Employer.

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.

MDHHS presented FAP-OI budgets from October 2014 through April 2016 demonstrated how an OI was calculated. Exhibit A, pp. 138-151. Notably, each of the monthly budgets factored Spouse's income from Employer as unreported. During the hearing, MDHHS realized that Petitioner did report that Spouse was employed on an application dated [REDACTED] 2014. Exhibit A, pp. 52-71. Upon the realization that Petitioner did report income, MDHHS acknowledged that the entire OI was incorrectly calculated. MDHHS' acknowledgement of an incorrectly calculated OI was appropriate.

Given the evidence, MDHHS failed to establish an OI of \$[REDACTED] from October 2014 through April 2015 due to a client-error. The erroneously calculated alleged OI entitles Petitioner to deletion of this alleged OI.

It should be noted that MDHHS may recalculate the OI based on agency-error (as opposed to client-error) and later pursue an OI from its updated calculation. Petitioner should be aware that she may later request a hearing if MDHHS pursues an updated OI amount. MDHHS should be aware that it may be barred from pursuing the OI due to agency-related errors being limited to no earlier than 12 months before the date of overissuance referral.²BAM 705 (October 2018), p. 5.

Alleged OI of \$[REDACTED] from November 2015 through October 2016

MDHHS also alleged a second OI. A Notice of Overissuance dated December 13, 2019, stated that Petitioner received \$[REDACTED] in overissued FAP benefits from November 2015 through October 2016 due to agency-error. Exhibit A, pp. 191-196.

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 2017), p. 7.

Clients requesting hearings disputing agency-error overissuances typically contend that they should not be required to repay an overissuance caused by MDHHS' error. As stated above, MDHHS may pursue agency-caused OIs as long as 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. MDHHS presented an Overissuance Referral dated October 25, 2016. Exhibit A, p. 10. An OI referral date of October 2016 allows MDHHS to pursue an OI as far back as October 2015. MDHHS alleged an agency-related OI beginning after October 2015. Thus, MDHHS is not barred from pursuing an agency-related OI beginning November 2015.

² This restriction is discussed below in more detail.

MDHHS alleged that an OI was caused by unbudgeted income from Employer. MDHHS presented documentation of Spouse's actual pays from Employer from March 4, 2016, through September 2, 2016 (Exhibit A, pp. 125-126) and Spouse's quarterly earnings from Employer (Exhibit A, pp. 122-124).

MDHHS also presented FAP-OI budgets from November 2015 through October 2016 demonstrating how an OI was calculated. Exhibit A, pp. 166-190. In compliance with policy, for benefit months when Spouse's total income from Employer was available, MDHHS budgeted Spouse's actual income. *Id.*, p. 8. For benefit months when MDHHS did not know Spouse's precise pays, MDHHS properly used an average of Spouse's quarterly earnings. *Id.* A recoupment specialist credibly testified that no other eligibility factors (i.e. income, expenses and group size) were changed from budgets corresponding to Petitioner's original FAP issuances. MDHHS also credibly testified that the budgets factored Petitioner's actual FAP issuances from the OI period. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$[REDACTED] was properly calculated.

The evidence established that Petitioner received an OI of \$[REDACTED] in FAP benefits from November 2015 through October 2016 due to agency-error. The evidence further established that MDHHS employed proper procedures in establishing an OI against Petitioner. Thus, Petitioner is not entitled to any remedy for MDHHS' claim of overissuance.

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).³ 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 benefits or \$10. Clients can also arrange for repayment of recipient claims.

Petitioner should also be aware that MDHHS can reduce or vanquish recipient claims when the overissuance cannot be paid within three years due to economic hardship. BAM 725 (October 2017), p. 1. Requests for hardship must be made from the recoupment specialist to the Overpayment, Research and Verification Section office outlining the facts of the situation and client's financial hardship. *Id.* The manager of the MDHHS Overpayment, Research and Verification Section has final authorization on the determination for all compromised claims. *Id.*

³ 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 established a recipient claim of \$[REDACTED] for FAP benefits overissued to Petitioner from November 2015 through October 2016 due to agency-error. The MDHHS request to establish a recipient claim of \$[REDACTED] against Petitioner is **APPROVED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a \$[REDACTED] overissuance of FAP benefits against Petitioner for the period from October 2014 through April 2015. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Close or delete the recoupment of the alleged OI of \$[REDACTED] in FAP benefits; and
- (2) Cease any collection actions, if any, associated with the recoupment.

Concerning the alleged OI of \$[REDACTED] the actions taken by MDHHS are **REVERSED**.

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-17-Hearings
MDHHS-Recoupment
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

██████████
██████████
██████████████████