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GOVERNOR

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

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Date Mailed: October 7, 2020
MOAHR Docket No.: 20-005223
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 hearing was held on September 28, 2020, via telephone conference. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Walita Randle, recoupment specialist.

ISSUE

The first issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner due to agency-error.

The second issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner due to client-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. From June 27, 2014, to February 3, 2017, Petitioner received ongoing employment income from ██████████ ██████████ (hereinafter, "Employer1").
2. On ██████████ 2016, Petitioner submitted to MDHHS an application for FAP benefits which reported earnings from Employer1. Exhibit A, pp. 58-84.

3. On January 5, 2017, Petitioner was hired by [REDACTED] (hereinafter, "Employer2").
4. On [REDACTED] 2017, Petitioner submitted to MDHHS an application for medical benefits which reported earnings from Employer1. Petitioner did not mention employment with Employer2.
5. From February 6, 2017, to November 9, 2017, Petitioner received ongoing employment income from Employer2.
6. From April 2017 through May 2017, Petitioner received a total of \$320 in FAP benefits.
7. On April 26, 2019, Petitioner's case was referred to the recoupment unit.
8. On April 14, 2020, MDHHS calculated that Petitioner received an overissuance totaling \$320 in FAP benefits from April 2017 through May 2017 due to unreported income from Employer2.
9. On April 14, 2020, MDHHS sent Petitioner a Notice of Overissuance stating that Petitioner received \$699 in overissued FAP benefits from October 2016 through February 2017 due to MDHHS's failure to budget income from Employer1.
10. On April 14, 2020, MDHHS sent Petitioner a Notice of Overissuance stating that Petitioner received \$320 in overissued FAP benefits from April 2017 through May 2017 due to Petitioner failing to timely report employment income from Employer2.
11. On May 1, 2020, Petitioner requested a hearing to dispute the alleged overissuances.

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 (RTM).

Petitioner requested a hearing to dispute MDHHS's attempted recoupment of allegedly overissued FAP benefits. Exhibit A, pp. 4-5. The alleged overissuance of FAP benefits comprised of separate overissuance periods, one caused by client-error and the other by agency-error. Each alleged overissuance must be separately evaluated.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (October 2018) pp. 1-2. Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.* An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Federal regulations refer to overissuances as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a). Recipient claims 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 pursues FAP-related agency errors when they exceed \$250. BAM 705 (October 2018), p. 1. MDHHS may pursue FAP-related client errors when they exceed \$250. BAM 715 (October 2017), p. 7.

Alleged OI based on agency-error

A Notice of Overissuance and related summary dated April 14, 2020, alleged that Petitioner received \$699 in over-issued FAP benefits from October 2016 through February 2017 due to MDHHS's failure to budget income from Employer1. Exhibit A, pp. 6-11. As the present case involves an alleged OI exceeding \$250, MDHHS is not barred from establishing the OI as long it is established to exceed \$250.

Another restriction to OIs based on agency-error concerns the OI period. For a FAP overissuance caused by agency error, the overissuance period begins the first month "when benefit issuance exceeds the amount allowed by policy, or 12 months before the date that the overissuance was referred to the recoupment specialist, whichever 12-month period is later." *Id.*, p. 5.

Petitioner's case was referred to a recoupment specialist on April 26, 2019. Exhibit A, p. 136. Going back 12 months from the date of recoupment specialist referral results in April 2018 being the earliest month of a potential OI period. MDHHS alleged an entire OI period from before April 2018. Thus, MDHHS is barred from establishing a recipient claim for the entire alleged OI period under a literal interpretation of its policy.

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 contended that OI periods can begin up to 12 months from the date that a case is corrected. MDHHS's contention is consistent with an example which immediately follows the policy explaining how to calculate the beginning of an overissuance period:

Example: An agency error was referred to the RS in May 2014 for the period of March 2011 through June 2012. The begin date would be July 2011. The [overissuance] period would be July 2011 through June 2012 since this is the latest 12-month period. *Id.*

In the example, if MDHHS was barred from seeking an OI period earlier than 12 months from the month of recoupment specialist referral (May 2014), MDHHS could not seek an OI earlier than May 2013. Yet, the example allows MDHHS to go back to 12 months from before the final month in the OI. In other words, according to the policy example, MDHHS can go back 12 months from before an overissuance is corrected, just as MDHHS contends. Thus, MDHHS provides contradictory information between its policy and corresponding example.

Generally, a contradiction between a literal interpretation of regulations and a corresponding example should be resolved in favor of adopting the literal interpretation of the regulation. Generally, in evaluating a contradiction in policy, the contradiction should be evaluated unfavorably against the party who drafted the policy. These generalities support rejecting MDHHS's contention that it is not barred from establishing an OI period against Respondent from before April 2018.

MDHHS's intent could be discovered by updates to its policy. The policy and corresponding example were controlling as of the alleged OI; however, if MDHHS has since resolved its policy contradiction, this could be an intent of the earlier policy. Unfortunately, current policy mirrors the policy contradiction at issue in the present case. BEM 705 (October 2018) p. 5. Thus, no inferences can be made from updated policy about when to begin an OI caused by agency error.

MDHHS policy is subject to federal regulations. Concerning how states are to begin overissuance periods, federal law states the following concerning non-trafficking recipient claims:

As a state agency, you must calculate a claim... back to at least 12 months prior to when you became aware of the overpayment and... for all claims, don't include any amounts that occurred more than six years before you became aware of the overpayment. 7 CFR 273.18(c)(1)(i)

Notably, federal regulations allow states to establish claims "back to at least 12 months" before awareness of the claim. Allowing MDHHS to pursue overissuances from "at least 12 months" earlier implies that MDHHS can go further back than 12 months from awareness of overissuance but need not do so. MDHHS chose to limit claims back to 12 months for OIs caused by agency errors from the recoupment specialist referral

date. This policy does not contradict federal regulations because MDHHS is going at least 12 months back for claims, just not farther back.

Federal regulations do not refer to recoupment specialist referral dates; instead, federal regulations utilize a standard of when an agency is “aware” of an overissuance. The federal regulations do not define when an agency is “aware” of an overissuance. At the hearing, MDHHS contended that awareness occurs when the overissuance stops (i.e. when the case is corrected). Applying this standard is problematic because MDHHS can stop a benefit overissuance without being aware that one occurred. The most definitive evidence of MDHHS’s awareness of an overissuance is proof of referral to a recoupment specialist. By specifically stating that agency errors are limited to periods going back 12 months from a recoupment specialist referral, MDHHS policy establishes that awareness of an overissuance occurs when an overissuance claim is referred to recoupment.

Though MDHHS policy includes a contradictory example, given the literal interpretation of its policy and federal regulations, it is found that MDHHS policy intended to limit claims caused by agency errors to 12 months from the date of recoupment specialist referral. As MDHHS seeks to pursue recoupment against Petitioner for an OI period from beyond 12 months from recoupment specialist referral, MDHHS is precluded from establishing an agency caused OI against Petitioner.

Alleged OI based on client-error

A Notice of Overissuance and related summary dated April 14, 2020, alleged that Petitioner received \$320 in over-issued FAP benefits from April 2017 through May 2017. Exhibit A, pp. 91-96. Unlike the alleged earlier OI, MDHHS alleged this OI was caused by Petitioner. MDHHS specifically alleged that Petitioner received an OI of FAP benefits by failing to timely report income from Employer2.

MDHHS presented FAP-OI budgets from April 2017 through May 2017 demonstrating how an OI was calculated. Exhibit A, pp. 105-109. In compliance with policy, the FAP-OI budget factored Petitioner’s actual income from Employer2 (see Exhibit A, pp. 102-103). 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 \$320 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. 104. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$320 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’s tardy reporting of income from Employer2 caused the OI.

MDHHS contended that Petitioner did not report income from Employer2 until May 2017. Petitioner testified that she thought that she called her worker in February or March of 2017 to report her income from Employer2.

Petitioner was hired by Employer 2 on January 5, 2017. Exhibit A, p. 102. Despite her earlier hiring, she did not report this on her application requesting medical benefits on January 24, 2017. Exhibit A, pp. 32-57. Clients are required to report the start of income within 10 days after the beginning of the income. Petitioner did not receive income from Employer2 until February 6, 2017. Thus, Petitioner was not technically obligated to report an employment hiring, but a reasonably thoughtful reporting would have included this information. Petitioner's failure to report her hiring on her application is consistent with a tardy reporting of income from Employer2.

The evidence established that Petitioner did not report to MDHHS earlier than May 2017 the receipt of income from Employer2. 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 April 2017 despite Petitioner's earlier employment with Employer2. 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 income from Employer2 resulted in \$320 in FAP benefits overissued to Petitioner from April 2017 through May 2017. Thus, MDHHS established a recipient claim of \$320 against Petitioner due to client error.

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 \$320 for FAP benefits overissued to Petitioner from April 2017 through May 2017 due to client-error. The MDHHS request to establish a recipient claim of \$320 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 basis for recoupment against Petitioner for \$699 in allegedly overissued FAP benefits from October 2016 through February 2017. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Delete the OI of \$699 as a claim against Petitioner; and
- (2) If necessary, return any previously recouped benefits.

The MDHHS request to establish a recipient claim against Petitioner due to agency error is **DENIED**.

CG/tm


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-41-Hearings
M. Holden
D. Sweeney
MDHHS-Recoupment
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MOAHR

Petitioner – Via First-Class Mail:

MI