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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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DIRECTOR

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Date Mailed: September 18, 2020
MOAHR Docket No.: 20-005329
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 via telephone conference on September 10, 2020. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Latoi Patillo, recoupment specialist.

ISSUE

The issue is whether MDHHS properly established a basis for recoupment against Petitioner due to allegedly overissued Food Assistance Program (FAP) benefits.

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 September 2019, Petitioner was an ongoing recipient of FAP benefits with her sister.
2. As of September 2019, Petitioner's sister received \$██████████ in monthly RSDI, which Petitioner reported to MDHHS.
3. On September 17, 2019, MDHHS determined that Petitioner was eligible to receive \$353 in FAP benefits beginning September 2020. Exhibit A, p. 22.
4. From September 2019 through December 2019, Petitioner received \$1,418 in FAP benefits. Petitioner's FAP eligibility did not factor RSDI for Petitioner's sister.

5. On January 24, 2020, Petitioner's case was referred to the recoupment unit.
6. On July 20, 2020, MDHHS calculated that Petitioner received an overissuance totaling \$1,355 in FAP benefits from September 2019 through December 2019 due to reported, but unbudgeted, RSDI. The calculation was based on actual issuances totaling \$1,418 and correct issuances totaling \$63.
7. On July 20, 2020, MDHHS sent Petitioner a Notice of Overissuance stating that Petitioner received \$1,355 in overissued FAP benefits from September 2019 through December 2019 due to MDHHS's error.
8. On August 3, 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's attempted recoupment of allegedly overissued FAP benefits. Exhibit A, p. 4. A Notice of Overissuance and related summary dated June 20, 2020, alleged that Petitioner received \$1,355 in over-issued FAP benefits from September 2019 through December 2019 due to MDHHS's failure to budget RSDI for household members. Exhibit A, pp. 5-6.

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. 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 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

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.

they exceed \$250. BAM 705 (October 2018), p. 1. As the present case involves a higher alleged overissuance, MDHHS is barred from pursuing recoupment, as long as the overissuance is established to exceed \$250.

Clients requesting hearings disputing agency-error overissuances typically contend that they should not be required to repay an overissuance caused by MDHHS's error. Such an argument is based in equity; in other words, it is inequitable to have a client pay for a mistake caused by MDHHS. Though an argument of equity is reasonable, federal regulations and MDHHS policy each authorize MDHHS to recoup benefits even when caused by MDHHS's error. Thus, MDHHS is not barred from establishing an OI against Petitioner even though caused by its own error.

MDHHS does limit the overissuance period for agency-caused FAP errors. The OI period 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 recoupment specialist, whichever period is later. *Id.*, p. 5. In the present case, MDHHS seeks recoupment for an overissuance period beginning September 2019. MDHHS referred the matter to a recoupment specialist on January 24, 2020. Going back 12 months from the referral date precludes an OI any earlier than January 2019. As MDHHS seeks an OI beginning September 2019, MDHHS is not barred from doing so.

The basis of the OI was MDHHS's alleged failure to budget RSDI for Petitioner's sister. MDHHS presented a Social Security Administration award letter for Petitioner's sister which listed a monthly RSDI benefit in 2019 of \$[REDACTED]. Exhibit A, p. 27. Petitioner did not dispute that her sister received \$[REDACTED] in monthly RSDI in 2019. The evidence established that Petitioner's sister received \$[REDACTED] in gross monthly RSDI during 2019. Petitioner's sister was group member with Petitioner; thus, her income is countable in determining Petitioner's FAP eligibility.

MDHHS presented FAP-OI budgets from September 2019 through December 2019 demonstrating how an OI was calculated. Exhibit A, pp. 12-20. In accordance with policy, each FAP-OI budget factored the gross amount of RSDI for Petitioner's sister. A recoupment specialist credibly testified that the FAP-OI budgets factored the same income and expenses from the original FAP budgets other than including RSDI for Petitioner's sister. The FAP-OI budgets factored Petitioner's actual issuances consistent with documentation listing Petitioner's past FAP issuances. Exhibit A, p. 11. Petitioner did not dispute any of the calculations involved in the OI. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$1,355 was properly calculated.

MDHHS can reduce or vanish 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.* MDHHS limits jurisdiction to determining hardships to its own agency. Thus,

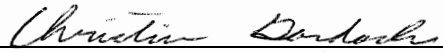
administrative hearing jurisdiction cannot be extended to consider whether Petitioner is eligible for a hardship. This information is only noted to inform Petitioner of the possibility of reduction or elimination of the overissuance.

The evidence established that Petitioner received an OI of \$1,355 in FAP benefits from September 2019 through December 2019 due to agency-error. The evidence further established that MDHHS employed proper procedures in establishing an OI. Thus, the MDHHS recipient claim for \$1,355 in FAP benefits is affirmed.

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 \$1,355 for FAP benefits overissued to Petitioner from September 2019 through December 2019 due to agency-error. The actions taken by MDHHS are **AFFIRMED**.

CG/tlf



Christian Gardocki
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

