



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 21, 2020
MOAHR Docket No.: 20-005673
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 hearing was held on October 12, 2020, via telephone conference line. Petitioner did not participate. [REDACTED] Petitioner's spouse (hereinafter, "Spouse"), participated on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Swanzetta Wilson, recoupment specialist.

ISSUE

The issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) and Family Independence Program (FIP) 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 the following as material fact:

1. On [REDACTED] 2016, Petitioner applied for FAP and FIP benefits. Petitioner reported a household with Spouse and a child, and no employment income.
2. From November 2016 through at least October 2017, neither Petitioner nor Spouse were U.S. citizens or qualified aliens.
3. On December 14, 2016, MDHHS mailed Petitioner notice of an approval of FAP and FIP benefits based on a benefit group of 1 person. Boilerplate stated that clients are to report changes, such as income, within 10 days.

4. From March 18, 2017, through at least October 2017, Spouse received weekly income from [REDACTED] (hereinafter, "Employer").
5. From May 2017 through October 2017, Petitioner received a total of \$1,092 in FAP benefits based on a 1-person group and \$0 employment income.
6. From May 2017 through October 2017, Petitioner received a total of \$1,836 in FIP benefits based on a 1-person group and \$0 employment income.
7. On September 20, 2017, Petitioner reported to MDHHS that Spouse was employed.
8. On October 16, 2017, Petitioner's case was referred to a recoupment specialist. Exhibit A, p. 10.
9. On an unspecified date, MDHHS calculated that Petitioner received an overissuance (OI) of \$474 in FAP benefits from May 2017 through October 2017 due to client-error. The OI calculation factored the following: Petitioner's actual pays from Employer, FAP issuances totaling \$1,092, and that Petitioner failed to timely report income from Employer.
10. On an unspecified date, MDHHS calculated that Petitioner received an overissuance of \$1,836 in FIP benefits from May 2017 through October 2017 due to client-error. The OI calculation factored the following: Petitioner's actual pays from Employer, and FIP issuances totaling \$1,836.
11. On August 6, 2020, MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued \$474 in FAP benefits to Petitioner from May 2017 through October 2017 due to client-error.
12. On August 6, 2020, MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued \$1,836 in FIP benefits to Petitioner from May 2017 through October 2017 due to client-error.
13. On [REDACTED], 2020, Petitioner requested a hearing to dispute the alleged FAP and FIP 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 (RFT).

The Family Independence Program was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. MDHHS administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

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.*

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 and FIP-related client errors when they exceed \$250. BAM 715 (October 2017), p. 7.

Alleged FAP overissuance

Petitioner requested a hearing to dispute MDHHS's attempt to establish a recipient claim related to allegedly overissued FAP benefits. Exhibit A, pp. 3-7. A Notice of Overissuance dated August 6, 2020, stated that Petitioner received \$474 in overissued FAP benefits from May 2017 through October 2017 due to client-error. Exhibit A, pp. 74-79.

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).

MDHHS specifically alleged that Petitioner received an OI of FAP benefits by failing to timely report income from Employer. To establish an OI, MDHHS must establish that Petitioner had an obligation to report income from Employer.

Not all clients are required to report changes in income. Certified change reporting households are required to report to MDHHS various changes in household circumstances. Changes required to be reported include the starting of employment income. 7 CFR 273.12(a). Change reporters differ from simplified reporters who are required to report only when the group's actual gross monthly income exceeds the SR

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 benefits issued to Petitioner were expunged.

income limit for their group size; no other reporting is required. BAM 200 (December 2013) p. 1. Simplified reporters are groups with countable earnings. *Id.*, p. 1.

Petitioner applied for FAP and FIP benefits on [REDACTED], 2016 and reported no employment income. Exhibit A, p. 11-32. MDHHS approved Petitioner for FIP and FAP on December 14, 2016, and sent a notice stating that \$0 employment income was factored. Exhibit A, pp. 33-39. MDHHS also presented a FAP budget covering Petitioner's eligibility from May 2017 through September 2017 which factored \$0 employment income. Exhibit A, pp. 57-59. The evidence established that \$0 employment income was factored in Petitioner's FAP eligibility during the alleged OI period. Without budgeted employment income, Petitioner was a change reporter and required to report the beginning of employment income for any household member.

MDHHS presented theworknumber.com documentation of Spouse's employment history. Exhibit A, pp. 50-53. The documentation listed pays to Spouse from March 18, 2017, through at least October 2017.

MDHHS presented FAP-OI budgets from May 2017 through October 2017 demonstrating how an OI was calculated. Exhibit A, pp. 61-73. In compliance with policy, the FAP-OI budgets factored Spouse's actual income from Employer for each benefit month. BAM 715 (October 2017) p. 7. Only one-third of Spouse's income was counted in calculating the alleged OI. MDHHS testimony credibly stated that no other factors were changed from the original FAP budgets, including a group size of one person. The budgets factored that Petitioner received \$1,092 in FAP benefits during the OI period; the total FAP issuances matched documentation listing Petitioner's FAP issuances during the alleged OI period. Exhibit A, p. 60. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$474 was calculated.

The FAP-OI budgets factored a rent of \$0. Spouse testified that he had a rent obligation during the OI period. Spouse's testimony implied an argument that MDHHS should correct the OI budgets to include a rent obligation. Spouse essentially wanted to dispute the calculation of the original FAP issuances. Even if MDHHS erred during the alleged OI period by not factoring a rent obligation, the time to dispute the error was during or near the alleged OI period. Clients have 90 days from the date of written notice to dispute FAP eligibility. BAM 600 (January 2020) p. 6. Spouse's attempt to dispute FAP eligibility now is barred by untimeliness. Thus, no investigation was made into whether MDHHS should have factored a rent obligation during the alleged OI period.²

The FAP-OI budgets also factored only a group size of one despite a household that included Petitioner, Spouse, and a minor child. When questioned during the hearing about why the group size was only one, MDHHS credibly explained that Petitioner and Spouse were excluded benefit members during the alleged OI period due to citizenship status (see BEM 225). As a result of their exclusion, MDHHS properly factored a pro-

² Petitioner's dispute would not be untimely if it was framed as an incorrect OI calculation based on MDHHS's failure to factor the same rent obligation budgeted during the alleged OI period. By submitting the original FAP budgets, the evidence established that \$0 rent was factored during the alleged OI period.

rated income for Spouse when calculating an overissuance. BEM 550 (January 2017) pp. 3-4.

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 failure to timely report employment income caused the OI.

Spouse testified that he remembered reporting the employment income to MDHHS. MDHHS did not disagree; MDHHS contended that the reporting of income was late. MDHHS presented Petitioner's Redetermination dated September 20, 2017, which reported that Spouse was employed. Exhibit A, pp. 42-49. MDHHS contended that no prior reporting of employment occurred. MDHHS bolstered its contention by checking Petitioner's Electronic Case File (ECF) during the hearing.³ MDHHS credibly testified that Petitioner's ECF showed no submissions from the start of Spouse's employment through the date of Redetermination. The evidence established that Petitioner first reported Spouse's employment income to MDHHS on September 20, 2017.

MDHHS delayed beginning an overissuance period until May 2017 despite Spouse's earlier employment with Employer. 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 employment income resulted in \$474 in FAP benefits overissued to Petitioner from May 2017 through October 2017. Thus, MDHHS established a recipient claim of \$474 against Petitioner due to client-error.

Alleged FIP overissuance

Petitioner also requested a hearing to dispute an alleged OI of FIP benefits. Exhibit A, pp. 3-7. A Notice of Overissuance dated August 6, 2020, stated that Petitioner received \$1,836 in overissued FIP benefits from May 2017 through October 2017. Exhibit A, pp. 97-102.

MDHHS again alleged the overissuance was caused by Petitioner's failure to timely report income. In the FAP analysis, it was established that Spouse received employment income from March 18, 2017, through at least October 2017 and that the income was not reported to MDHHS until September 20, 2017. The same findings apply to the FIP overissuance analysis.

³ An ECF contains all written submissions from a client. BAM 300 (January 2020) p. 1.

MDHHS presented FIP-OI budgets from May 2017 through October 2017 demonstrating how an OI was calculated. Exhibit A, pp. 84-96. In compliance with policy, the budgets factored Spouse's actual income from Employer for each benefit month. BAM 715 (October 2017) p. 7. MDHHS testimony credibly stated that no other factors were changed from the original FAP budgets, including a group size of one person. The budgets factored that Petitioner received \$1,836 in FAP benefits during the OI period; the total FAP issuances matched documentation listing issuances during the alleged OI period. Exhibit A, pp. 82-83. Using the procedures set forth in BEM 515, 518, and 520 for determining FIP eligibility, an OI of \$1,836 was calculated.

Like the FAP-OI budgets, only a group size of one was factored due to Petitioner's and Spouse's ineligibility based on citizenship (see BEM 225). Unlike the FAP-OI budgets, FIP eligibility does not factor a client's rent or whether income was reported timely. Also unlike the FIP budgets, Spouse's income was not pro-rated due to Spouse not being a group member; this is compliant with policy (see BEM 515, 518, and 520).

The evidence established that Petitioner received an OI of \$1,836 in FIP benefits from May 2017 through October 2017 due to untimely reported income. Thus, MDHHS established a claim of \$1,836 in FIP benefits over-issued to Petitioner from May 2017 through October 2017 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 claims of \$474 in FAP and \$1,836 in FIP benefits overissued to Petitioner from May 2017 through October 2017 due to client-error. The MDHHS requests to establish FAP and FIP claims against Petitioner are **APPROVED**.

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-17-Hearings
MDHHS-Recoupment-Hearings
M. Holden
D. Sweeney
B. Sanborn
M. Schoch
BSC4
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]