



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 19, 2019
MAHS Docket No.: 19-001946
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 4-way telephone hearing was held on April 18, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Richkelle Curney, hearing facilitator, and Minnie Egbuonu, recoupment specialist. [REDACTED] of [REDACTED] participated as an English-Dari translator.

ISSUE

The issue is whether MDHHS properly established a basis for recoupment due to 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. On February 24, 2016, Petitioner applied for FAP benefits. Petitioner's application reported a household which included Petitioner's spouse, [REDACTED] (hereinafter, "Spouse"), Petitioner's adult daughter, [REDACTED] (hereinafter, "Child"), and three minor children. Boilerplate application language stated that clients are to report income changes to MDHHS within 10 days. Exhibit A, pp. 9-47.
2. On March 4, 2016, MDHHS mailed Petitioner a Notice of Case Action approving Petitioner for FAP benefits beginning February 2016. Boilerplate

language stated that clients are to report income changes to MDHHS within 10 days. A budget summary stated that \$0 employment income was factored in the approval for FAP benefits. Exhibit A, pp. 48-51.

3. From July 1, 2016, through October 7, 2016, Spouse received ongoing employment income from [REDACTED] (hereinafter, "Employer"). Exhibit A, pp. 54-55.
4. From July 1, 2016, through January 13, 2017, Child also received ongoing employment income from Employer. Exhibit A, pp. 56-59.
5. From September 2016 through January 2017, MDHHS issued \$925/month in FAP benefits to Petitioner. Exhibit A, p. 60.
6. As of January 2017, Petitioner had not reported to MDHHS Spouse's or Child's receipt of employment income.
7. On December 11, 2018, MDHHS calculated that Petitioner received an overissuance totaling \$2,640 in FAP benefits from September 2016 through January 2017 due to Spouse's and Child's unbudgeted and unreported income from Employer. The calculation was based on previous issuances totaling \$4,625 and "correct" issuances totaling \$1,985. Exhibit A, pp. 61-74.
8. On December 12, 2018, MDHHS sent a Notice of Overissuance and Overissuance Summary to Petitioner which stated that Petitioner failed to report employment income which resulted in an overissuance of \$2,640 in FAP benefits from September 2016 through January 2017. Exhibit A, pp. 4-6.
9. On [REDACTED], 2019, Petitioner requested a hearing to dispute the alleged overissuance. Exhibit A, p. 3.

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' attempted recoupment of \$2,640 in FAP benefits allegedly overissued to Petitioner from September 2016 through January 2017. MDHHS testimony and a Notice of Overissuance stated that the alleged overissuance was caused by Petitioner's failure to report employment income for Spouse and Child.

Petitioner signed an agreement to repay the \$2,640 alleged overissuance. Exhibit A, p. 7. Normally, a signed repay agreement is an admission that the overissuance was properly calculated and processed and a hearing is unnecessary to determine otherwise. In the present case, Petitioner submitted the repay agreement on the same date he requested a hearing. The conflicting submissions are indicative that Petitioner did not understand the consequence of signing a repay agreement. Based on Petitioner's lack of understanding in signing the repay agreement, it will not be recognized as acceptance that the alleged OI was properly calculated and processed. The analysis will proceed to consider the merits of whether a basis for recoupment was established.

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).

Federal regulations mandate states to mandate clients to report income within 10 days after the income begins. 7 CFR 273.12(a)(2). MDHHS policy properly reflects federal regulations in their policy. BAM 105 (January 2015), p. 7.

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 client errors when they exceed \$250. BAM 715 (October 2017) p. 7.

The overissuance period begins the later of the first month when an OI occurred or 12 months before the date the OI was referred to a recoupment specialist. *Id.*, p. 5. The OI ends the month before the benefit is corrected. *Id.* The OI amount is the amount the group actually received minus the amount the group was entitled to receive. *Id.*, p. 6.

MDHHS presented FAP budgets demonstrating how an OI was calculated. The budgets factored Spouse and Child's previously unbudgeted income with Employer. In compliance with policy, actual pays from the employment were factored. BAM 715 (October 2017) p. 8. The budgets properly factored previous issuances to Petitioner totaling \$4,625. A total OI of \$2,640 was calculated for the OI period.

MDHHS began the alleged overissuance period in September 2018. MDHHS delayed the OI until September 2016 even though Spouse and Child each received employment income beginning July 2016. Such delay is compliant with policy which requires beginning the OI period in the first full benefit month after allowing time for a client reporting, MDHHS processing, and pending negative action date. *Id.*, p. 5.

The OI budgets notably deprived Petitioner of a 20% income credit for timely reporting employment income. BEM 556 states that clients who fail to timely report employment

income are not entitled to the budget credit. Thus, for the budgets to be correct, MDHHS must establish that Petitioner failed to report employment income.

Petitioner testified that he reported Spouse's and Child's income from Employer to MDHHS though he also testified he could not remember. Petitioner also thought his reporting might have been overlooked because his native language is not English. Petitioner presented no corroboration or documentation supporting a timely reporting of employment income.

MDHHS presented specialist comments on Petitioner's case. Exhibit A, pp. 80-81. The comments did not include any reporting of employment income by Petitioner either during or before the OI period. Notably, the case comments included fairly detailed statements on various dates; the detailed statements throughout Petitioner's case history is consistent with an improbability that Petitioner's specialist failed to document two reportings of employment income by Petitioner.

Given the evidence, Petitioner did not report to MDHHS Spouse's or Child's income from Employer. Thus, MDHHS properly did not credit Petitioner with reporting employment income in calculating the OI amount.

Petitioner testified that he has health problems including difficulties with his heart and fingers. Petitioner further testified that he has no income and would have difficulty in repaying any recoupment. Petitioner's testimony, though sympathetic, does not affect whether a recipient claim should be established.

The evidence established that Petitioner received an OI of \$2,640 in FAP benefits due to untimely reported employment income from Employer. Thus, MDHHS established a recipient claim against Petitioner for \$2,640 in overissued FAP benefits.

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 \$2,640 in FAP benefits overissued to Petitioner from September 2016 through January 2017. 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
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
MAHS

Petitioner – Via First-Class Mail:

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