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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 12, 2019
MAHS Docket No.: 19-002436
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 telephone hearing was held on April 10, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. ██████████, Petitioner's girlfriend, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Jody Anderson, recoupment specialist.

ISSUES

The first issue is whether Petitioner timely requested a hearing to dispute establishment of an overissuance of Food Assistance Program (FAP) benefits.

If Petitioner timely requested a hearing, the second issue is whether MDHHS established a basis for recoupment of FAP benefits.¹

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 March 25, 2014, Petitioner applied for FAP benefits. Petitioner reported a household that included his minor children ██████ (hereinafter, "Child1") and ██████ (hereinafter, "Child2"). Petitioner reported partial custody of Child1 and Child2. Exhibit A, pp. 1-34.

¹ If Petitioner did not timely request a hearing, then there is no second issue and Petitioner's hearing request would be dismissed.

2. On February 3, 2015, Petitioner submitted to MDHHS a Redetermination form concerning continuation of FAP benefits. Petitioner reported that Child1 and Child2 each sleep in Petitioner's residence an average of 10 days/month. Exhibit A, pp. 35-40.
3. On February 26, 2015, MDHHS approved Petitioner for \$511/month in FAP benefits based on a FAP group that included Child1 and Child2. Exhibit A, pp. 41-44.
4. On February 1, 2016, Petitioner submitted to MDHHS a Redetermination form concerning continuation of FAP benefits. Petitioner reported that Child1 and Child2 each sleep in Petitioner's residence an average of 10 days/month. Exhibit A, pp. 47-52.
5. On February 3, 2016, MDHHS approved Petitioner for \$511/month in FAP benefits based on a FAP group that included Child1 and Child2. Exhibit A, pp. 53-56.
6. On January 4, 2017, Petitioner submitted to MDHHS a Redetermination form concerning continuation of FAP benefits. Petitioner reported that Child1 sleeps in Petitioner's residence an average of 10 days/month and that Child2 sleeps in his home an average of 16 days per month. Exhibit A, pp. 59-66.
7. On March 13, 2017, MDHHS approved Petitioner for \$511/month in FAP benefits based on a FAP group that included Child1 and Child2. Exhibit A, pp. 67-70.
8. From March 2014 through April 2017, Child1 and Child2 slept at Petitioner's residence an average of 10 days/month.
9. In or near May 2017, a recoupment specialist received a potential recoupment claim concerning Respondent.
10. On August 15, 2017, MDHHS calculated that Petitioner received an overissuance of \$3,804 in FAP benefits from May 2016 through April 2017 due to the improper inclusion of Child1 and Child2 as FAP group members. Exhibit A, pp. 75-89.
11. On August 16, 2017, MDHHS sent a Notice of Overissuance to Respondent stating that Respondent received an OI of \$3,804 in FAP benefits due to agency error. Exhibit A, pp. 90-91.
12. On an unspecified date before [REDACTED], 2017, Petitioner submitted a hearing request to MDHHS which was not received by MDHHS.
13. On [REDACTED], 2019, MDHHS received Petitioner's second hearing requested to dispute the alleged overissuance. Exhibit A, pp. 135-136.

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 establishment of an OI of \$3,804 in FAP benefits. Before the substance of Petitioner's hearing request may be examined, it must be determined whether there is administrative hearing jurisdiction.

A client's request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action. BAM 600 (August 2018), p. 6. Generally, hearing requests must be submitted to MDHHS in writing. *Id.*, p. 2. Requests for Food Assistance Program (FAP) benefit hearings may be made orally. *Id.*

It was not disputed that MDHHS issued notice of the OI to Petitioner on August 16, 2017. MDHHS received Petitioner's written hearing request on [REDACTED], 2019. Thus, MDHHS received Petitioner's hearing request more than one year after issuance of written notice and Petitioner's hearing request dated [REDACTED], 2019, was untimely.

Petitioner testified that the hearing request dated [REDACTED], 2019, was his second hearing request to dispute the overissuance. Petitioner testified that he mailed a hearing request to MDHHS in 2017 though he was uncertain of the date. Petitioner's girlfriend testified that she assisted Petitioner with the hearing request though she was also uncertain of the precise submission date. Petitioner's girlfriend testified that she remembered being aware of the 90-day deadline to request a hearing and that a hearing request was submitted to MDHHS near and before the 90-day deadline.

MDHHS testimony indicated that Petitioner's correspondence history reflected no hearing request within 90 days of August 10, 2017. It is plausible that MDHHS received Petitioner's hearing request but did not upload it as part of their scanning process.

Petitioner understandably had no documentary proof of his alleged hearing request mailing from 2017 though some evidence was supportive. A client who claims that MDHHS lost an earlier hearing request would be expected to make such an allegation in a second hearing request; Petitioner's hearing request dated 3/11/19, made such an allegation. The testifying recoupment specialist also stated that Petitioner repeated his allegation during a prehearing conference. Given the circumstances, Petitioner's evidence of a hearing request submission in 2017 was consistent and credible.

Given the evidence, it is found that Petitioner requested a hearing in 2017 and within 90 days of the Notice of Overissuance mailed on August 16, 2017. Thus, Petitioner's dispute may proceed on its merits.

Petitioner requested a hearing to dispute an attempted recoupment of \$3,804 in FAP benefits allegedly overissued to Respondent from May 2016 through April 2017. MDHHS testimony and a Notice of Overissuance stated that the overissuance was caused by MDHHS erroneously including Child1 and Child2 in Petitioner's FAP group.

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).

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.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., MDHHS is to determine a primary caretaker. BEM 212 (October 2015), p. 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). *Id.* The child is always in the FAP group of the primary caretaker. *Id.* The primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. *Id.*, p. 2.

Multiple written notices issued to Petitioner stated that Petitioner received FAP benefits of \$511/month based on a 3-person group that included Child1 and Child2. The evidence sufficiently established that Petitioner received FAP benefits from May 2016 through April 2017 based on Child1 and Child2 as FAP group members.

Petitioner's reporting documents dated March 25, 2014, February 3, 2015, and February 1, 2016, each reported that Child1 and Child2 spent only 10 overnights/month in Petitioner's residence. Petitioner's testimony acknowledged the accuracy of his reporting. The evidence established that Child1 and Child2 spent less than half the days in Petitioner's residence, and therefore, Child1 and Child2 should not have been members of Petitioner's FAP group from May 2016 through April 2017.

MDHHS presented OI budgets from May 2016 through April 2017. Each budget calculated Petitioner's FAP eligibility from the OI period based on the exclusion of Child1 and Child2 as group members. Presumably, no other changes were made to eligibility factors used in original FAP issuances from the OI period. A total OI of \$3,804 was calculated.

Petitioner's testimony complained that he should not have to repay benefits overissued to him when he was not at fault for the overissuances. Petitioner was not only faultless, he also reasonably could not have known that his children who lived with him for 10 days per month were ineligible to receive FAP benefits on his case. Despite Petitioner's reasonable complaint, MDHHS may recoup benefits for their own error when the total overissuance exceeds \$250. Thus, Petitioner's lack of contribution to the overissuance is not relevant.


MDHHS may have overissued FAP benefits to Petitioner since 2014. Despite Petitioner possibly receiving excess FAP benefits for an approximate 3-year period, MDHHS sought to establish an overissuance only for the period of May 2016 through April 2017. The OI period sought by MDHHS is compliant with policy limiting MDHHS to agency-error recoupments from the later of the first month benefits were overissued or the 12th month before the OI was referred to a recoupment specialist. BAM 705 (January 2016) p. 5.

Given the evidence, MDHHS established an overissuance of \$3,804 in FAP benefits from May 2016 through April 2017 due to agency-related error. Thus, MDHHS established a basis for recoupment against Respondent.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly established a basis for recoupment of \$3,804 in FAP benefits overissued to Petitioner from May 2016 through April 2017 due to agency error. The actions taken by MDHHS are **AFFIRMED**.

CG/cg



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

