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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 11, 2019
MOAHR Docket No.: 19-008626
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 September 5, 2019, from ██████████ Michigan. Petitioner appeared and was unrepresented. Leah Brooks, assistant attorney general, participated as legal counsel for the Michigan Department of Health and Human Services (MDHHS). Jennifer Braxmaier, recoupment specialist, testified on behalf of MDHHS.

ISSUE

The issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner from September 2017 through May 2018.

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 July 2017, Petitioner was an ongoing recipient of FAP benefits.
2. On July 28, 2017, Petitioner submitted to MDHHS a Redetermination form. On the form, Petitioner reported employment with ██████████ (hereinafter, "Employer1"). Petitioner also submitted documentation verifying pays from Employer1 which included a gross pay of \$████████ on July 14, 2017. Exhibit A, pp. 3-13.

3. On August 25, 2017, Petitioner submitted to MDHHS documentation of a second job. Petitioner's documentation reported employment with [REDACTED] (hereinafter, "Employer2") as of August 11, 2017. The document stated Petitioner would work 8 to 10 hours/week, receive an hourly wage of [REDACTED] and receive an unspecified amount of tips. The document also stated that Petitioner had not yet received a pay from Employer2. Exhibit A, p. 14.
4. Beginning September 2017, MDHHS determined Petitioner's FAP eligibility based on employment income of \$[REDACTED]/month. The determination factored Petitioner's pay from Employer1 dated July 14, 2017, as \$[REDACTED]. MDHHS factored \$0 income from Employer2. Exhibit A, p. 17.
5. On February 22, 2018, Petitioner submitted to MDHHS a Semi-Annual Contact Report which reported stopped employment with Employer2 as of January 22, 2018. Additionally, Petitioner submitted ongoing pays from Employer1. Exhibit A, pp. 21-30.
6. On an unspecified date, MDHHS continued Petitioner's FAP eligibility through May 2018 by factoring Petitioner's pay from Employer1 dated July 14, 2017, as \$[REDACTED].
7. On July 29, 2019, MDHHS calculated that Petitioner received an overissuance of \$2,307 from September 2017 through January 2018 due to improperly budgeted employment from Employer1 and Employer2. The OI calculations factored the following: Petitioner's actual pays from Employer1, Petitioner's averaged pays from Employer2, that Petitioner timely reported employment income from Employer1, that Petitioner did not timely report employment income from Employer2, and a total of \$2,631 in actual issuances.
8. On July 29, 2019, MDHHS calculated that Petitioner received an overissuance of \$1,750 from February 2018 through May 2018 due to improperly budgeted employment income from Employer1. The OI calculations factored the following: Petitioner's actual pays from Employer1, Petitioner timely reported employment income, and a total of [REDACTED] in actual issuances.
9. On July 29, 2019, MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued \$4,057 in FAP benefits to Petitioner from September 2017 through May 2018 due to agency-error. Exhibit A, pp. 64-65.
10. On August 15, 2019, MDHHS received Petitioner's hearing request disputing the OI.

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' attempt to establish a recipient claim related to allegedly overissued FAP benefits. A Notice of Overissuance dated July 29, 2019, stated that Petitioner received an OI of \$4,057 in FAP benefits from September 2017 through May 2018 due to agency error.

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).

Petitioner's primary contention was that she should not be held accountable for repayment of overissued FAP benefits when MDHHS was at fault. During the hearing, MDHHS acknowledged that the entire OI was due to its own failures to properly budget Petitioner's employment incomes. Petitioner's contention is essentially one of equity. Unfortunately for Petitioner, equitable remedies are not recognized under administrative hearing jurisdiction. Whether MDHHS can establish a recipient claim under the present case's circumstances depends on MDHHS policy and federal regulations.

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 alleged an overissuance exceeding \$250. MDHHS policy allows establishment of overissuances if over \$250 even when due to MDHHS error. Thus, Petitioner is not entitled to any administrative remedy based on her lack of fault if the OI exceeds \$250. The analysis may proceed to determine whether MDHHS correctly calculated the alleged OI.

Federal regulations dictate that 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). BEM 556 dictates how MDHHS is to calculate FAP benefit eligibility.

Alleged OI from September 2017 through January 2018

MDHHS presented FAP-OI budgets from September 2017 through January 2018 (Exhibit A, pp. 43-52), documentation of Petitioner's actual pays from Employer1 (Exhibit A, pp. 38-40), documentation of Petitioner's quarterly pays from Employer2 (Exhibit A, p. 41), and documentation of Petitioner's past FAP issuances. The FAP-OI budgets verified that MDHHS properly factored the following: Petitioner's past FAP issuances, actual pays from Employer1, that Petitioner's Employer1 income was timely reported, use of Petitioner's expenses from original FAP issuances, an average of Petitioner's employment w Employer2, and proper calculation to determine FAP eligibility.

MDHHS stated the OI was caused by under-budgeting Petitioner's income from Employer1. A budget summary from a Notice of Case Action dated September 25, 2017, stated that Petitioner's ongoing FAP eligibility was based on an employment income of \$[REDACTED]. MDHHS credibly stated that the OI was primarily caused by factoring Petitioner's biweekly pay from Employer1 dated July 14, 2017, as \$[REDACTED], rather than the actual pay of \$[REDACTED].

MDHHS alleged an OI was also caused by unbudgeted income from Petitioner's second job. In determining an OI, MDHHS factored Petitioner's income from Employer2 as unreported.² By factoring Petitioner's income from Employer2 as unreported, MDHHS denied Petitioner a 20% budget credit for the income. Thus, if Petitioner timely reported to MDHHS income from Employer2, then all OI budgets which factored Employer2 income as unreported would be incorrect.

Petitioner submitted to MDHHS documentation from Employer2 on August 25, 2017. The documentation was signed by staff from Employer2 on August 11, 2017 and stated that Petitioner had not yet received a pay. The documentation also stated that Petitioner worked 8 to 10 hours/week for \$[REDACTED]/hour plus an unspecified amount of tips. Petitioner's submission verified that MDHHS was aware of Petitioner's income from Employer2 as of August 25, 2017. MDHHS could have projected the income to affect Petitioner's FAP eligibility for September 2017. If MDHHS believed that additional information was needed (e.g., an amount of tips), MDHHS should have requested the information from Petitioner. Either way, MDHHS had the obligation to act, not Petitioner. The evidence established that Petitioner's income from Employer2 was not unreported.

¹ Additionally, MDHHS is to subtract any benefits that were expunged (i.e. unused benefits which eventually expire from non-use). Expungement of benefits was not relevant in the present case.

² The budgeting of Petitioner's income from Employer1 as unreported was curious, Throughout the hearing, MDHHS testimony admitted that the OI was completely due to agency error. Later in the hearing, MDHHS limited its responsibility to Petitioner's income from Employer1 not being budgeted.

As MDHHS improperly factored all of Petitioner's income from Employer2 as unreported, all OI budgets including income from Employer2 are incorrect by depriving Petitioner of a 20% budget credit. All OI budgets from September 2017 through January 2018 factored unreported income from Employer2. Thus, all OI budgets from September 2017 through January 2018 were incorrect.³ The budgets calculated an OI of \$2,307. Thus, MDHHS is denied its request to establish \$2,307 of the requested recipient claim.

Alleged OI from February 2018 through May 2018

MDHHS presented FAP-OI budgets from February 2018 through May 2018 (Exhibit A, pp. 53-64), documentation of Petitioner's actual pays from Employer1 (Exhibit A, pp. 38-40), and documentation of Petitioner's past FAP issuances. An OI totaling \$1,750 was calculated.

The OI budgets verified that MDHHS properly factored Petitioner's past FAP issuances, actual pays from Employer1, that Petitioner's income from Employer1 was timely reported, and proper calculation to determine FAP eligibility. The OI budgets properly did not factor any income from Employer2 as Petitioner's employment there stopped in January 2018. The budgets properly calculated that Petitioner received an OI of \$1,750 in FAP benefits from February 2018 through May 2018.

Petitioner had no argument to the OI other than that she should not be responsible for repayment of benefits overissued due to MDHHS' errors. As discussed above, MDHHS may establish an overissuance for claims exceeding \$250. Given the evidence, MDHHS established a recipient claim of \$1,750 against Petitioner.


³ During the hearing, the undersigned expressed concern over MDHHS calculating an OI based on unreported income from Employer2. In response, MDHHS' legal counsel requested a continuance so that amended budgets reflecting Employer2 income as reported could be presented; Petitioner objected to continuing the hearing. Good cause was not found for continuance under Mich Admin Code, R 792.11011.

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 \$1,750 for FAP benefits overissued to Petitioner from February 2018 through May 2018. The MDHHS request to establish a recipient claim of \$1,750 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 recipient claim of \$2,307 for FAP benefits overissued to Petitioner from September 2017 through February 2018. The MDHHS request to establish a recipient claim of \$2,307 against Petitioner is **DENIED**.

CG/jaf



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

