



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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Date Mailed: September 23, 2019
MOAHR Docket No.: 19-009073
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 3-way telephone hearing was held on September 18, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Julie McLaughlin, hearing facilitator, and Annette Fullerton, recoupment specialist.

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 July 8, 2018, Petitioner submitted a Redetermination form to MDHHS. Petitioner's application reported a household which included her spouse, Gerald Clark (hereinafter, "Spouse"). Exhibit A, pp. 38-45.
2. As of September 17, 2018, Spouse was incarcerated. Exhibit A, pp. 32-35.
3. As of September 24, 2018, MDHHS was aware that Spouse had been incarcerated for at least the past 30 days. Exhibit A, p. 37.

4. From November 2018 through August 2019, MDHHS issued a total of \$1,980 in FAP benefits to Petitioner. The benefits factored Spouse as a group member.
5. On August 6, 2019, MDHHS calculated that Petitioner received an overissuance totaling \$1,980 in FAP benefits from November 2018 through August 2019. The calculation factored all information from the original FAP determinations other than the removal of Spouse from Petitioner's FAP group. MDHHS calculated that Petitioner's "actual" FAP issuances totaled \$2,910 and that "correct" issuances totaled \$930. Exhibit A, pp. 11-31.
6. On August 6, 2019, MDHHS sent a Notice of Overissuance and Overissuance Summary to Petitioner, which stated that Petitioner failed to report Spouse's incarceration beginning September 17, 2018, which resulted in an overissuance of \$1,980 in FAP benefits from November 2018 through August 2019. Exhibit A, pp. 3-4.
7. On August 15, 2019, 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' attempted recoupment of \$1,980 in FAP benefits allegedly overissued to Petitioner from November 2018 through August 2019. MDHHS' testimony and a Notice of Overissuance stated that the alleged overissuance was caused by Petitioner's failure to report that Spouse was not living with her.

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).

FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212 (January 2017), p. 1. Temporarily absent

persons may remain group members. A person is temporarily absent if the absence is expected to last less than 30 days or the person is hospitalized and there is a plan for the person's return. *Id.*, p. 3.

MDHHS alleged that Spouse was absent from Petitioner's home beginning August 2018. Specifically, MDHHS alleged that Spouse was incarcerated beginning August 2018 through August 2019.

MDHHS presented Michigan Department of Corrections documents concerning Spouse's incarceration. Exhibit A, pp. 32-35. The documents stated that Spouse was sentenced on September 17, 2018, for an offense dated June 6, 2018. The documents also stated that Spouse would not be released from incarceration earlier than October 2019. Petitioner's testimony acknowledged that Spouse was not in her home since at least August 2018. The evidence established that Spouse was not in Petitioner's home since August 2018.

MDHHS presented FAP-OI budgets demonstrating how an OI was calculated. A recoupment specialist credibly testified that the OI budgets were identical to the budgets used in the original FAP issuances from the alleged OI period other than the exclusion of Spouse as a group member. The FAP-OI budgets calculated that Petitioner's actual issuances totaled \$2,910, which matched the total issuances listed on Petitioner's benefit history. Exhibit A, p. 10. A total OI of \$1,980 was properly calculated for the OI period based on calculations outlined in BEM 556.

Petitioner's testimony spent much time claiming that she reported to MDHHS that Spouse was incarcerated, and therefore, MDHHS was responsible for the OI. MDHHS did not acknowledge such a reporting from Petitioner but conceded that MDHHS was aware on September 24, 2018, that Spouse was incarcerated. MDHHS' concession was consistent with an investigation report dated September 24, 2018, which stated that Spouse was incarcerated for more than 30 days. The evidence established that the OI was caused by agency-error.

Consideration was given to dismissing the recoupment against Petitioner based on a change in the cause of the OI. Though dismissal of recoupment is a proper outcome, allowing the hearing to proceed based on an amended basis for overissuance is preferable. If the recoupment action was dismissed, MDHHS could immediately restart recoupment by mailing Petitioner an updated Notice of Overissuance reflecting the OI was caused by agency error. Presumably, Petitioner would again request another hearing. In the interest of avoiding future inconvenience to the parties, the analysis will proceed to determine if MDHHS established recoupment based on agency-error.

Petitioner's primary argument is that she should not be responsible for repayment of benefits that were issued because of agency-error. Petitioner's argument may be supported by principles of equity but not by the policy of MDHHS.

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. MDHHS also pursues OIs caused by agency-errors when they exceed \$250. As the present case involves an OI exceeding \$250, MDHHS may pursue recoupment even though the OI was caused by agency-error.

For OIs caused by an agency error, the OI 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. Under the circumstances of the present case, no change need be taken to the OI period or budgets because of MDHHS' error.

The evidence established that Petitioner received an OI of \$1,980 in FAP benefits due to MDHHS' failure to remove Spouse as a group member. Thus, MDHHS established a basis for recoupment against Petitioner for \$1,980 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 improperly pursued recoupment against Petitioner for a client-error. Concerning the cause of OI, the actions taken by MDHHS are **REVERSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly established a basis for recoupment against Petitioner for \$1,980 in FAP benefits overissued to Petitioner from November 2018 through August 2019 due to agency-error. Other than the cause of OI, the actions taken by MDHHS are **AFFIRMED**.

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

DHHS
(via electronic mail)

Jackie Stempel
MDHHS-Muskegon-Hearings
BSC3
M Holden
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DHHS Department Rep.
(via electronic mail)

MDHHS-Recoupment-Hearings

Petitioner
(via first class mail)

