



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: September 30, 2019
MOAHR Docket No.: 19-009271
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 3-way telephone hearing was held on September 23, 2019, from ██████████ Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Megan Sterk, supervisor, and Christine Allen 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 ██████████, 2018, Petitioner submitted to MDHHS an application requesting FAP benefits. Exhibit A, pp. 1-12
2. On September 10, 2018, Petitioner timely reported to MDHHS that her child's father and living-together partner (hereinafter, "LTP") moved into her household. Exhibit A, p. 19.
3. On September 19, 2018, Petitioner timely submitted to MDHHS documentation that LTP received a weekly gross employment pay of \$██████████ on September 13, 2018. Exhibit A, p. 20.

4. On October 26, 2018, Petitioner timely submitted to MDHHS documentation that LTP received the following gross weekly employment pays: \$[REDACTED] on October 4, 2018, \$[REDACTED] on October 11, 2018, \$[REDACTED] on October 18, 2018, and \$[REDACTED] on October 25, 2018. Exhibit A, pp. 26-29.
5. On October 29, 2018, MDHHS mailed a Notice of Case to Petitioner determining that Petitioner was eligible to receive \$[REDACTED] in FAP benefits beginning November 2018. The determination factored \$[REDACTED] in employment income for LTP. Exhibit A, pp. 30-33.
6. From November 2018 through March 2019, MDHHS issued a total of \$[REDACTED] in FAP benefits to Petitioner.
7. On August 2, 2019, MDHHS calculated that Petitioner received an overissuance totaling \$[REDACTED] in FAP benefits from November 2018 through March 2019. The calculation factored all information from the original FAP determinations other than the inclusion of LTP's actual employment income for each benefit month. MDHHS calculated that Petitioner's "actual" FAP issuances totaled \$[REDACTED] and that "correct" issuances totaled \$[REDACTED] Exhibit A, pp. 39-49.
8. On August 2, 2019, MDHHS sent a Notice of Overissuance and Overissuance Summary to Petitioner stating that Petitioner received an OI of \$[REDACTED] in FAP benefits from November 2018 through March 2019 due to MDHHS' error. Exhibit A, pp. 50-51.
9. On August 12, 2019, Petitioner requested a hearing to dispute the alleged overissuance and recoupment.

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 \$[REDACTED] in FAP benefits allegedly overissued to Petitioner from November 2018 through March 2019. MDHHS' testimony and a Notice of Overissuance stated that the alleged overissuance was caused by MDHHS' 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).

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.¹

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.

MDHHS alleged that Petitioner received an OI based on a timely reported income change which MDHHS improperly processed. It was not disputed that Petitioner properly reported LTP as a group member as well as his weekly employment income. Upon receiving LTP’s income verifications, MDHHS calculated LTP’s income to be ██████████ MDHHS’ calculation factored the following gross weekly pays for LTP: \$0 on October 4, 2018, \$██████████ on October 11, 2018, \$██████████ on October 8, 2018, and \$██████████ on October 25, 2018. LTP’s actual pay on October 4, 2018, was \$██████████ MDHHS alleged that, as a result of miscalculating LTP’s income, Petitioner received overissued FAP benefits from November 2018 through March 2019.

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. MDHHS may establish a recipient claim for an OI as long as the amount of OI exceeds \$250.

MDHHS presented FAP-OI budgets demonstrating how an OI was calculated. A recoupment specialist credibly testified that the OI budgets factored the same group size, income, and expenses used in the original FAP issuances from the alleged OI period other than factoring LTP’s actual income from each benefit month. MDHHS factored LTP’s actual employment income amounts which is compliant with MDHHS policy. BAM 705 (October 2018), p. 8. The FAP-OI budgets calculated that Petitioner’s actual issuances totaled \$██████████ MDHHS did not present Respondent’s FAP issuance history verifying issuances

¹ This assumes that the OI is established to exceed \$250.

totaling \$ [REDACTED] but the amount was not disputed. The budgets calculated an OI of \$ [REDACTED] based on the prescribed calculations from BEM 556.

In requesting a hearing, MDHHS inexplicably sought a recipient claim for \$ [REDACTED]. An Overissuance Summary attached to the Notice of Overissuance listed an OI of \$ [REDACTED]. Exhibit A, pp. 50-51. The \$ [REDACTED] alleged OI was not supported by the presented FAP-OI budgets which calculated an OI of \$ [REDACTED]3. Due the lack of evidence, MDHHS will be denied its request for a recipient claim the difference between the requested claim and the OI calculated by presented budgets ([REDACTED])

The evidence established that Petitioner received an OI of \$ [REDACTED] in FAP benefits due to MDHHS' improper budgeting of employment income. Thus, MDHHS established a basis for recoupment against Petitioner for \$ [REDACTED] 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 failed to establish a basis for recoupment against Petitioner for \$ [REDACTED] in FAP benefits. The MDHHS request to establish a recipient claim of \$ [REDACTED] is **PARTIALLY DENIED**.

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 \$ [REDACTED] in FAP benefits overissued to Petitioner from November 2018 through March 2019 due to agency-error. The MDHHS request to establish a recipient claim of \$ [REDACTED] is **PARTIALLY APPROVED**.

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)

Mariah Schaefer
MDHHS-Allegan-Hearings
BSC3
M Holden
D Sweeney

DHHS Department Rep.
(via electronic mail)

MDHHS-Recoupment-Hearings

Petitioner
(via first class mail)

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