



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 6, 2020
MOAHR Docket No.: 19-012837
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 hearing was held on October 28, 2020, via telephone conference line. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Brandon McNamara, recoupment specialist.

ISSUE

The issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner.

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 [REDACTED], 2013, Petitioner applied for FAP, cash, State Emergency Relief (SER), and health coverage. Petitioner reported a household that included himself and two minor children. Petitioner reported that the mother of his children was ex-wife [REDACTED] (hereinafter, "Ex-Spouse"). Exhibit A, pp. 19-49.
2. On December 30, 2013, MDHHS approved Petitioner for FAP benefits beginning December 2013 based on a group that did not include Ex-Spouse. Exhibit A, pp. 50-56.

3. From January 2, 2014, through at least March 2018, Ex-Spouse received biweekly income from the State of Michigan (hereinafter, "Employer").
4. From January 2014 through February 2016, Petitioner received a total of \$[REDACTED] in FAP benefits based on a group that did not include Ex-Spouse or Ex-Spouse's income. Exhibit A, pp. 311-317.
5. On February 4, 2014, Petitioner applied for FAP, cash, SER, and medical. Petitioner reported a household that included himself and two minor children. Petitioner reported \$0 household income. Exhibit A, pp. 63-91.
6. On January 8, 2015, Petitioner applied for FAP, cash, and SER. Petitioner reported a household that included only himself. Petitioner reported receipt of unemployment benefits. Exhibit A, pp. 94-127.
7. On [REDACTED] 2015, Petitioner applied for FAP and SER. Petitioner reported a household that included only himself. Petitioner reported receipt of unemployment benefits. Exhibit A, pp. 128-164.
8. On March 25, 2015, MDHHS approved Petitioner for \$[REDACTED] in monthly FAP benefits beginning April 2015 based on a 1-person group with \$[REDACTED] in monthly unearned income. Exhibit A, pp. 165-168.
9. On April 27, 2015 MDHHS approved Petitioner for [REDACTED] in monthly FAP benefits beginning May 2015 based on a 1-person group with \$0 income. Exhibit A, pp. 169-172.
10. On February 17, 2016, Ex-Spouse reported to the State of Michigan Secretary of State an address matching Petitioner's.
11. On [REDACTED] 2017, Petitioner applied for FAP, cash, and SER. Petitioner reported a household that included only himself. Petitioner reported \$0 household income. Exhibit A, pp. 173-192.
12. On [REDACTED], 2017, Petitioner applied for cash and SER. Petitioner reported a household that included himself and two minor children. Petitioner reported \$0 household income. Exhibit A, pp. 193-237.
13. Effective [REDACTED] 2018, Ex-Spouse's insurance coverage covered the two minor children of Petitioner.
14. From October 2017 through March 2018, Petitioner received a total of \$[REDACTED] in FAP benefits based on a group that did not include Ex-Spouse or Ex-Spouse's income.

15. As of March 2018, Petitioner had not reported to MDHHS that he resided with Ex-Spouse.
16. Following an investigation, MDHHS concluded that Ex-Spouse was in Petitioner's home as of February 2016.
17. As of April 16, 2019, Ex-Spouse received State of Michigan insurance associated at an address matching Petitioner's.
18. On October 30, 2019, MDHHS calculated that Petitioner received an overissuance of \$[REDACTED] in FAP benefits from January 2014 through February 2016 due to client-error. The overissuance (OI) calculation factored the following: actual FAP issuances totaling \$[REDACTED], Ex-Spouse as a group member, and unreported income for Ex-Spouse.
19. On October 30, 2019, MDHHS calculated that Petitioner received an overissuance of \$[REDACTED] in FAP benefits from October 2017 March 2018 due to client-error. The OI calculation factored the following: actual FAP issuances totaling \$[REDACTED], Ex-Spouse as a group member, and unreported income for Ex-Spouse.
20. On May 7, 2019, Petitioner's case was referred to a recoupment specialist. Exhibit A, p. 18.
21. On November 14, 2019, MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued \$[REDACTED] in FAP benefits to Petitioner from January 2014 through March 2018 due to client-error.
22. On [REDACTED] 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's attempt to establish a recipient claim related to allegedly overissued FAP benefits. Exhibit A pp. 7-8. A Notice of Overissuance dated November 14, 2019, stated that Petitioner received \$[REDACTED] in

overissued FAP benefits from January 2014 through March 2018 due to client-error. Exhibit A, pp. 9-15.

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). 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. CFR 273.18(c)(1). Additionally, expunged benefits (i.e. unused benefits which eventually expire from non-use) are to be subtracted from the overissuance.

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). MDHHS may pursue FAP-related client errors when they exceed \$250. BAM 715 (October 2017), p. 7.

MDHHS specifically alleged that Petitioner received an OI of FAP benefits by failing to timely report Ex-Spouse as a household member, along with her income. To establish an OI, MDHHS must establish that Ex-Spouse was a household member during the OI period.

Petitioner testified that he and Ex-Spouse were married, but they divorced in 2007. Despite their divorce, Petitioner testified that he and Ex-Spouse have an amicable relationship with no custody or support orders regarding their children. Petitioner testified that he does not technically live with his ex-wife. Petitioner testified that he is occasionally in need of physical care and that occasionally Ex-Spouse lives with him, along with their children, to provide the needed care.¹ Petitioner also testified that Ex-Spouse splits her residence between his and her mother’s home. Petitioner provided no corroboration for any of his testimony.

MDHHS initiated an investigation of Petitioner’s household members on February 28, 2018. MDHHS documented that an investigation was requested after Petitioner submitted a Change Report to MDHHS on February 21, 2018, stating that he lived with his two minor children since October 2017. Exhibit A, p. 16. MDHHS thought Petitioner’s claim was suspicious because he last reported living with his children in 2014.² *Id.*

MDHHS presented the findings of its investigation begun in February 2018 and finalized on March 7, 2018. Exhibit A, pp. 16-17. An investigator documented that Ex-Spouse’s

¹ Petitioner did not explain why he needs care or how his ex-wife can take care of him while working full-time for the [REDACTED]

² It is not understood why it was suspicious for Petitioner to have a three-year gap between living with children.

Secretary of State records listed an address since February 2016 which matched Petitioner's address; a Secretary of State record verified the same. Exhibit A, p. 238. The investigator noted that Ex-Spouse was a [REDACTED] employee with a current mailing address matching Petitioner's. Also, the investigator documented that Petitioner's children's school confirmed a matching address for Petitioner and Ex-Spouse as of March 2018. Additionally, MDHHS presented a letter from Ex-Spouse's children's health insurance company stating that Petitioner's children were covered by Ex-Spouse since October 2017. Exhibit A, p. 239. As a result of the investigation, the investigation report documented that Ex-Spouse was added to Petitioner's benefit case as of February 2016. Exhibit A, p. 17. Given the evidence, MDHHS established that Petitioner and Ex-Spouse resided together from February 2016 through March 2018.

MDHHS alleged an OI period covering January 2014 through March 2018 over three separate OI periods: January 2014 through July 2014, January 2015 through February 2016, and October 2017 through February 2018.³ The OI periods will be evaluated in light of the period that Petitioner and Ex-Spouse lived together.

MDHHS cannot establish an OI for a period from before Ex-Spouse resided with Petitioner. Thus, the MDHHS request to establish an OI from January 2014 through January 2016 is denied. Concerning February 2016, MDHHS also cannot establish an OI for a benefit month in which a change in household members occurred. For non-income changes, MDHHS is to affect the month occurring after the first full month after the change is reported. In the present case, a change was not reported; however, applying the policy by foregoing the 10 days from a change in February 2016 would still require beginning an OI in March 2016.

Given the evidence, MDHHS failed to establish an OI from January 2014 through February 2016. MDHHS presented FAP-OI budgets calculating an OI totaling \$[REDACTED] from January 2014 through February 2016. Exhibit A, pp. 318-357. Thus, MDHHS failed to establish an OI against Petitioner for \$[REDACTED]. The analysis will proceed to evaluate MDHHS's request for an OI after February 2016.

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. Mandatory group members include children and their parents who reside together. BEM 212 (January 2017) p. 1. As Petitioner and Ex-Spouse resided with their children, Ex-Spouse was a mandatory FAP group member who should have been factored in Petitioner's FAP eligibility, along with her income.

MDHHS presented FAP-OI budgets from October 2017 through March 2018 demonstrating how an OI was calculated. Exhibit A, pp. 358-370. The budgets factored Petitioner's actual FAP issuances totaling \$[REDACTED] as documented on Petitioner's issuance history. Exhibit A,

³ Presumably, Petitioner did not receive FAP benefits during the gaps between OI periods.

pp. 311-317. In its investigation, MDHHS obtained Ex-Spouse's income history from Employer. Exhibit A, pp. 257-310. In compliance with policy, the FAP-OI budgets factored Ex-Spouse's actual income for each benefit month. BAM 715 (October 2017) p. 7. MDHHS testimony credibly stated that group members, income, and expenses were not changed other than the addition of Ex-Spouse and her income. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$[REDACTED] was calculated.

The FAP-OI budgets notably counted Ex-Spouse's income as unreported. As a result, Petitioner was not given a 20% credit for timely reporting income. Petitioner's FAP application dated October 20, 2017 did not report Ex-Spouse as a household member, nor did it report her income. Exhibit A, pp. 173-192. Similarly, Petitioner's application for other benefits dated November 17, 2017, also did not report Ex-Spouse as a household member or her income.⁴ Exhibit A, pp. 193-237.

Petitioner's testimony contended that his specialist was at fault for him not reporting Ex-Spouse as a household member. Petitioner seemed to contend that his household circumstances are complicated and that his specialist had the responsibility to delve into its complexities. Petitioner's contention might have merit if there were a hint of reporting that Ex-Spouse and Petitioner resided together. However, none of the presented applications from Petitioner suggested that Ex-Spouse resided with Petitioner. There were also several comments documented by Petitioner's specialists concerning reporting by Petitioner; none of the comments from before the OI period concerned Ex-Spouse residing with Petitioner. Exhibit A, pp. 92-93.

The evidence established that Petitioner failed to report Ex-Spouse as a household member or her income. The evidence further established that Petitioner received an overissuance of \$[REDACTED] in FAP benefits from October 2017 through March 2018 as a result of his failed reporting. Thus, MDHHS established a recipient claim of \$[REDACTED] against Petitioner.

⁴ Petitioner also did not report Ex-Spouse as a household member or her income on all presented applications going back to 2013.

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 \$[REDACTED] for FAP benefits overissued to Petitioner from October 2017 through March 2018 due to client-error. MDHHS's request for a recipient claim of \$[REDACTED] of \$[REDACTED] against Petitioner is **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a recipient claim against Petitioner for \$[REDACTED] in FAP benefits from January 2014 through February 2016. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Delete the OI of \$[REDACTED] as a claim against Petitioner; and
- (2) If necessary, return any previously recouped benefits.

MDHHS's request for a recipient claim of \$[REDACTED] of \$[REDACTED] against Petitioner is **DENIED**.

CG/tm



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

Via Email:

MDHHS-Oakland-3-Hearings
MDHHS-Recoupment-Hearing
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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