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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: May 21, 2020
MOAHR Docket No.: 20-001611
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 May 11, 2020, from Trenton, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Sharion Hopson, 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. As of August 2019, Petitioner was an ongoing recipient of FAP benefits as part of a 4-person group.
2. On August 9, 2019, Petitioner received her first pay, following a period of short-term disability income, from her employer, [REDACTED] (hereinafter, "Employer").
3. On [REDACTED] 2019, Petitioner submitted documentation to MDHHS reporting the restarting of employment income from Employer.
4. From September 2019 through November 2019, Petitioner received over \$4,500 in monthly income from Employer.

5. In September 2019, MDHHS issued \$535 in FAP benefits to Petitioner, based on \$0 employment income.
6. In October 2019 and November 2019, MDHHS issued \$545 in monthly FAP benefits to Petitioner, based on \$0 employment income.
7. On January 6, 2020, MDHHS calculated that Petitioner received an overissuance totaling \$1,625 in FAP benefits from September 2019 through November 2019.
8. On January 6, 2020, MDHHS sent a Notice of Overissuance and Overissuance Summary to Petitioner stating that Petitioner received an OI of \$1,625 in FAP benefits from September 2019 through November 2019 due to MDHHS's error.
9. On January 21, 2020, 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 recoupment of allegedly overissued FAP benefits. Exhibit A, pp. 5-6. A Notice of Overissuance stated that Petitioner received \$1,625 in over-issued FAP benefits from September 2019 through November 2019 due to MDHHS' error. Exhibit A, pp. 56-61.

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.

Clients requesting hearings disputing agency-error overissuances typically contend that they should not be required to repay an overissuance caused by MDHHS's error;

Petitioner was no different. Such contentions may be supported by principles of equity but not by the policy of MDHHS. MDHHS may pursue agency-caused OIs as long as the amount exceeds \$250. There is no maximum limit to the amount of OI that may be recouped. Thus, MDHHS is not barred from establishing an OI due to its own fault, as long as the OI is established to exceed \$250.

MDHHS alleged that Petitioner received an OI after Petitioner timely reported to MDHHS a restarting of income from Employer on August 14, 2019. Exhibit A, pp. 25-27. MDHHS acknowledged that its failure to timely process the reported change caused the OI.

For FAP benefits overissued due to agency error, the overissuance period begins the first month (or first pay period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the RS, whichever 12 month period is later. BAM 705 (October 2018) p. 5. To determine the first month of the overissuance period for changes reported timely and not acted on, MDHHS is to allow time for the full standard of promptness (SOP) for change processing and the full negative action suspense period. *Id.*, p. 6. The SOP for processing FAP benefits changes is 10 days. BAM 220 (April 2019) p. 7. The effective month is the first full month that begins after the negative action effective date. BEM 505 (October 2017) p. 12. A negative action suspense period is at least 12 days to allow for a client to respond to a timely notice of a negative action. BAM 220 (April 2019) p. 12. A negative action period must end on a day of business.¹

Petitioner timely reported a change in income on August 9, 2019. Adding 22 days (10 days for processing and 12 days for the negative action) to the report date of August 9, 2019, is August 31, 2019; this could justify, a change being effective beginning the following month of September 2019. However, August 31, 2019, happened to fall on a weekend. Timely negative actions cannot be completed until the following day of business. Thus, applying the SOP for change processing and negative action period would result in a negative action date in September 2019. The affected benefit month would be October 2019.

Given the evidence, MDHHS may not establish a basis earlier than October 2019. FAP-OI budgets calculated an OI of \$535 for September 2019. MDHHS will be denied its request for \$535 of the alleged OI. The analysis will proceed to consider the alleged OI for October 2019 and November 2019.

MDHHS presented FAP-OI budgets demonstrating how an OI was calculated. A recoupment specialist credibly testified that the FAP-OI budgets factored the same group

¹ MDHHS policy appears to not explain how negative action dates for FAP benefits are calculated. The justification for requiring a negative action date to fall on a workday is supported by Child Development and Care policy which requires that negative actions dates fall on workdays. BAM 220 (April 2019) p. 10. Also, requiring negative action dates to fall on workdays would make sense as the purpose of a negative action period is to allow the client time to react to the proposed negative action; if a negative action date could end on a non-workday, then clients would be deprived a portion of time to respond to a negative action.

size and expenses used in the original FAP issuances from the alleged OI period. The only change made by MDHHS was the inclusion of Petitioner's actual gross employment income; this inclusion is compliant with policy. BAM 705 (October 2018) p. 8. Petitioner's pay documents from Employer verified that Petitioner received at least \$4,500 in gross income in October 2019 and November 2019. Based on the prescribed calculations from BEM 556, Petitioner would have been ineligible to receive any FAP benefits due to excess income. Thus, the monthly \$545 FAP benefit issuances to Petitioner in October 2019 and November 2019 were improper.

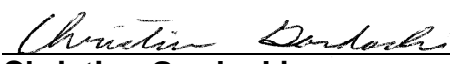
The evidence established that Petitioner received an OI of \$1,090 in FAP benefits due to MDHHS's improper budgeting of employment income. Thus, MDHHS established a basis for recoupment against Petitioner for \$1,090 from a total claim of \$1,625.

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 \$535 in FAP benefits from September 2019. The MDHHS request to establish a recipient claim of \$535 out of a total claim of \$1,625 is **REVERSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a basis for recoupment against Petitioner for \$1,090 in FAP benefits overissued to Petitioner from October 2019 through November 2019 due to agency-error. The MDHHS request to establish a recipient claim of \$1,090 out of a total claim of \$1,625 is **AFFIRMED**.

CG/cg



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-Bay-Hearings
MDHHS-RECOUPMENT-HEARINGS
M. Holden
D. Sweeney
BSC2- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

