



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]
[REDACTED]

Date Mailed: July 21, 2020
MOAHR Docket No.: 20-003773
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 July 8, 2020, from Trenton, Michigan. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Latoie Pitillo, 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], 2015, Petitioner applied for FAP benefits.
2. On December 11, 2015, and December 18, 2015, Petitioner received \$1,052.80 in gross income from [REDACTED] (hereinafter, "Employer1").
3. On December 15, 2015, Petitioner began employment with [REDACTED] (hereinafter, "Employer2").
4. From January 2016 through March 2016, Petitioner received \$22,164 in income from Employer2.
5. From April 2016 through June 2016, Petitioner received \$15,132 in income from Employer2.

6. On June 27, 2016, Petitioner began employment with [REDACTED]. (hereinafter, "Employer3").
7. From July 2016 through September 2016, Petitioner received \$22,182 in income from Employer3.
8. From January 2016 through October 2016, Petitioner received \$194 in monthly FAP benefits. Petitioner's FAP eligibility did not factor income from Employer1, Employer2, or Employer3.
9. On September 8, 2016, Petitioner reported to MDHHS receipt of employment income for the first time. Petitioner also requested closure of FAP benefits.
10. On March 31, 2020, MDHHS calculated that Petitioner received an overissuance of \$1,940 in FAP benefits from January 2016 through October 2016 due to client-error. The overissuance (OI) calculation factored the following: Petitioner's average quarterly pays from Employer2 and Employer3, FAP issuances totaling \$1,940, and that Petitioner failed to timely report income from Employer2 and Employer3.
11. On March 31, 2020, MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued \$1,940 in FAP benefits to Petitioner from January 2016 through October 2016 due to client-error.
12. On [REDACTED] 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' attempt to establish a recipient claim related to allegedly overissued FAP benefits. Exhibit A, pp. 6-7. A Notice of Overissuance dated March 31, 2020, stated that Petitioner received \$1,940 in overissued FAP benefits from January 2016 through October 2016 due to client-error. Exhibit A, pp. 9-14.

MDHHS stated in its Hearing Summary that Petitioner's hearing request was untimely because it was not received within 10 days of written notice. Exhibit A, p. 1. This statement implied that Petitioner was not entitled to an administrative hearing for his dispute. A client's request for hearing must be received in the MDHHS local office within

90 days of the date of the written notice of case action.¹ BAM 600 (January 2020) p. 6. Petitioner submitted his hearing request only 15 days after MDHHS sent notice of the OI. Thus, Petitioner's hearing request was timely, and his dispute may proceed on its merits.

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.² CFR 273.18(c)(1).

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 income from Employer1, Employer2, and Employer3. To establish an OI, MDHHS must establish that Petitioner had an obligation to report income from Employer.

Not all clients are required to report changes in income. Certified change reporting households are required to report to MDHHS various changes in household circumstances. Changes required to be reported include the starting of employment income. 7 CFR 273.12(a). Change reporters differ from simplified reporters (SR) who are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size; no other reporting is required. BAM 200 (December 2013) p. 1. Simplified reporters are groups with countable earnings. *Id.*, p. 1.

As of December 2015, Petitioner received FAP benefits based on \$0 employment income. Budgeting \$0 employment income is consistent with being a change reporter and not a simplified reporter. The evidence sufficiently established that Petitioner was obligated to report employment income changes to MDHHS as of December 2015.

¹ Additionally, MDHHS policy states that clients that "timely hearing requests" must be received within the pending negative action period (usually approximately 11 days). "Timely hearing requests" concern a client's right to continue receiving benefits at a rate before a negative action when MDHHS reduces or terminates a client's ongoing eligibility. As MDHHS took no action to Petitioner's ongoing FAP eligibility, a "timely hearing request" is not relevant.

² Additionally, MDHHS is to subtract any benefits that were expunged (i.e. unused benefits which eventually expire from non-use). None of Petitioner's allegedly over-issued benefits were expunged.

MDHHS presented FAP-OI budgets from January 2016 through October 2016 demonstrating how an OI was calculated. Exhibit A, pp. 17-37. Each of the budgets factored earnings from Employer2 and Employer3. MDHHS did not present proof of Petitioner's actual earnings from the alleged OI period. Instead, MDHHS presented Petitioner's quarterly earnings from Employer2 for the first two quarters of 2016 (January 2016 through June 2016). Exhibit A, p. 51. From July 2016 through September 2016, MDHHS factored averaged monthly income of \$7,394 from Employer3. For October 2016, MDHHS factored income from Employer3 of \$7,770. The FAP-OI budgets factored that Petitioner received \$1,940 in FAP benefits during the OI period; the total FAP issuances matched documentation listing Petitioner's issuances during the alleged OI period. Exhibit A, pp. 15-16. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$1,940 was calculated.

MDHHS failed to present any documents listing Petitioner's income from Employer3 from July 2016 through October 2016. Consideration was given to denying an OI for these months due to a lack of evidence; however, other evidence supported finding an OI. Petitioner's testimony conceded that the total OI was valid, in part, due to his full-time hourly wage of \$48 throughout the OI period. Further MDHHS at least presented documentation verifying that Petitioner began employment with Employer3 on June 27, 2016. Exhibit A, p. 51 Full-time employment for \$48 per hour as of June 27, 2016, is consistent with the income factored by MDHHS.

The FAP-OI budget notably deprived Petitioner of a 20% income credit for timely reporting employment income. BEM 556 states that clients who fail to report employment income are not entitled to the credit. Thus, for the FAP-OI budgets to be correct, MDHHS must establish that Petitioner's failure to report employment income caused the OI.

MDHHS testified that Petitioner first reported receipt of income during the OI period on a Redetermination received by MDHHS on September 8, 2016. Exhibit A, pp. 53-58. Petitioner's testimony acknowledged the same. Given the evidence, MDHHS properly did not factor a 20% credit for timely reporting employment income.

MDHHS began an overissuance period in January 2016. To determine the first month of a client-error overissuance, MDHHS allows time for the client to report changes (see BAM 105), time to process changes (see BAM 220), and the full negative action suspense period (see *Id.*). BAM 715 (October 2017), p. 5. In all, MDHHS must add 32 days to the date of an income change and impose a benefit period for the first full month that follows. Petitioner received his first pay from Employer1 on December 11, 2015; this would have been the first day he was required to report an income change. The first full month following 32 days from December 11, 2015, is February 2016. Thus, MDHHS should have started the OI period in February 2016. The FAP-OI budget for January 2016 listed an alleged OI of \$194. Exhibit A, pp. 18-19. Thus, MDHHS will be denied \$194 of the alleged OI against Petitioner. MDHHS is left with an alleged OI of \$1,746 from February 2016 through October 2016. The evidence established that Petitioner's failure to report

employment income resulted in Petitioner receiving \$1,746 in over-issued FAP benefits from February 2016 through October 2016.

Petitioner testified that he is mentally ill and has a history of mental illness in his family. Petitioner's testimony was consistent with a letter from a physician stating that Petitioner suffers from bipolar affective disorder and was seen in 2013 and 2018. Exhibit B, p. 1. Petitioner also testified that his mental illness causes incendiary behavior which renders him functionally unemployable for extended durations.³ Petitioner further testified that he was in massive debt at the time of OI and needed the FAP benefits to help himself out of debt.

Petitioner contended that his circumstances should void the OI. Notably, MDHHS policy does not factor circumstances mentioned by Petitioner in determining whether an OI should be imposed. Petitioner essentially contends that MDHHS policy is unfair because it does not consider a person's circumstances beyond whether an overissuance occurred. Petitioner's contention is one of equity. Administrative hearing jurisdiction does not include arguments of equity.⁴ Thus, consideration may not be given to Petitioner's circumstances in determining whether an OI should be imposed.

Petitioner also testified that he was eligible to receive FAP benefits from March 2015, but he did not receive them. Thus, Petitioner essentially contends that the OI should be offset by benefits he unjustly did not receive. An under-issuance of benefits from March 2015 should have been raised by Petitioner near the time of the alleged under-issuance; nevertheless, MDHHS was asked during the hearing about Petitioner's FAP eligibility in 2015. MDHHS responded that Petitioner did not apply for FAP benefits until October 2015; Petitioner acknowledged the same. Even if Petitioner was not tardy by several years in disputing FAP eligibility from March 2015, MDHHS has no obligation to consider a person's FAP eligibility without an application for benefits.

Given the evidence, MDHHS properly established an OI of \$1,746 in FAP benefits against Petitioner due to client-error. MDHHS policy is not without some recourse for clients who may have difficulty in repayment.

MDHHS can reduce or vanquish recipient claims when the overissuance cannot be paid within three years due to economic hardship. BAM 725 (October 2017), p. 1. Requests for hardship must be made from the recoupment specialist to the Overpayment, Research and Verification Section office outlining the facts of the situation and client's financial hardship. *Id.* The manager of the MDHHS Overpayment, Research and Verification Section has final authorization on the determination for all compromised claims. *Id.*

³ The testifying specialist documented on April 20, 2020, that Petitioner verbalized homicidal threats, as well as friends in "high places" who will bail him out of trouble. Exhibit A, p. 3. During the hearing, Petitioner apologized for his statements.

⁴ An administrative agency possesses the jurisdiction to address any questions within its remit, but it is an administrative tribunal only and not a court possessing general equitable and legal powers. *Mich Mut Liability Co v. Baker*, 295 Mich. 237, 242; 294 N.W. 168 (1940).

The above information is only noted to inform Petitioner of the possibility of reduction or elimination of the overissuance. MDHHS gives itself exclusive authority to determine hardships. Thus, administrative hearing jurisdiction cannot be extended now or later to consider whether Petitioner is eligible for a hardship.

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 \$194 in FAP benefits issued in January 2016. The MDHHS request to establish against Petitioner an OI of \$194 of a \$1,940 recipient claim is **DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established an OI due to client-error against Petitioner of \$1,746 in FAP benefits from February 2016 through October 2016. The MDHHS request to establish against Petitioner an OI of \$1,746 of a \$1,940 recipient claim is **APPROVED**.

CG/tlf



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-II-Hearings
MDHHS-Recoupment
BSC4 Hearing Decisions
D. Sweeney
M. Holden
MOAHR

Petitioner – Via First-Class Mail:

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