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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: October 7, 2020  
MOAHR Docket No.: 20-005263  
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 September 10, 2020, via telephone conference. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Minnie Egbuono, 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. From at least April 2017 through March 2018, Petitioner was an ongoing recipient of FAP benefits, along with her spouse.
2. From at least April 2017 through March 2018, Petitioner's spouse received employment income which was reported to MDHHS.
3. On September 18, 2019, Petitioner's case was referred to the recoupment unit.
4. On July 30, 2020, MDHHS calculated that Petitioner received an overissuance totaling \$1,752 in FAP benefits from April 2017 through March 2018 due to reported, but unbudgeted, earnings for Petitioner's spouse.

5. On July 31, 2020, MDHHS sent Petitioner a Notice of Overissuance stating that Petitioner received \$1,752 in overissued FAP benefits from April 2017 through March 2018 due to MDHHS's error.
6. On August 6, 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 attempted recoupment of allegedly overissued FAP benefits. Exhibit A, pp. 4-5. A Notice of Overissuance and related summary dated July 31, 2020, alleged that Petitioner received \$1,752 in over-issued FAP benefits from April 2017 through March 2018 due to MDHHS's failure to budget income for Petitioner's spouse. Exhibit A, pp. 8-13.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (October 2018) pp. 1-2. Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.* An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Federal regulations refer to overissuances as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a). Recipient claims 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.<sup>1</sup> 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 pursues FAP-related agency errors when they exceed \$250. BAM 705 (October 2018), p. 1. As the present case involves an alleged OI exceeding \$250, MDHHS is not barred from establishing the OI as long it is established to exceed \$250.

Another restriction to OIs based on agency-error concerns the OI period. For FAP overissuance caused by agency error, the overissuance period begins the first month "when benefit issuance exceeds the amount allowed by policy, or 12 months before the

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<sup>1</sup> Additionally, MDHHS is to subtract any benefits that were expunged (i.e. unused benefits which eventually expire from non-use). There was no evidence that any of Petitioner's FAP benefits were expunged.

date that the overissuance was referred to the recoupment specialist, whichever 12-month period is later.” *Id.*, p. 5.

Petitioner’s case was referred to a recoupment specialist on September 18, 2019. Exhibit A, p. 67. Going back 12 months from the date of recoupment specialist referral results in September 2018 being the earliest month that MDHHS could allege recoupment. MDHHS alleged an entire OI period from months before September 2018. Thus, MDHHS is barred from establishing a recipient claim for the entire alleged OI period under a literal interpretation of its policy.

MDHHS contended that OI periods can begin up to 12 months from the date that a case is corrected. MDHHS’s contention is consistent with an example which immediately follows the policy explaining how to calculate the beginning of an overissuance period:

**Example:** An agency error was referred to the RS in May 2014 for the period of March 2011 through June 2012. The begin date would be July 2011. The [overissuance] period would be July 2011 through June 2012 since this is the latest 12-month period. *Id.*

In the example, if MDHHS was barred from seeking an OI period earlier than 12 months from the month of recoupment specialist referral (May 2014), MDHHS could not seek an OI earlier than May 2013. Yet, the example allows MDHHS to go back to 12 months from before the final month in the OI. In other words, according to the policy example, MDHHS can go back 12 months from before an overissuance is corrected, just as MDHHS contends. Thus, MDHHS provides contradictory information between its policy and corresponding example.

Generally, a contradiction between a literal interpretation of regulations and a corresponding example should be resolved in favor of adopting the literal interpretation of the regulation. Generally, in evaluating a contradiction in policy, the contradiction should be evaluated unfavorably against the party who drafted the policy. These generalities support rejecting MDHHS’s contention that it is not barred from establishing an OI period against Respondent from before September 2018.

MDHHS’s intent could be discovered by updates to its policy. The policy and corresponding example were controlling as of the alleged OI; however, if MDHHS has since resolved its policy contradiction, this could be an intent of earlier policy. Unfortunately, current policy mirrors the policy contradiction at issue in the present case. BEM 705 (October 2018) p. 5. Thus, no inferences can be made from updated policy about when to begin an OI caused by agency error.

MDHHS policy is subject to federal regulations. Concerning how states are to begin overissuance periods, federal law states the following concerning non-trafficking recipient claims:

As a state agency, you must calculate a claim... back to at least 12 months prior to when you became aware of the overpayment and... for all claims, don't include any amounts that occurred more than six years before you became aware of the overpayment. 7 CFR 273.18(c)(1)(i)

Notably, federal regulations allow states to establish claims "back to at least 12 months" before awareness of the claim. Allowing MDHHS to pursue overissuances from "at least 12 months" earlier implies that MDHHS can go further back than 12 months from awareness of overissuance but need not do so. MDHHS chose to limit claims back to 12 months for OIs caused by agency errors from the recoupment specialist referral date. This policy does not contradict federal regulations because MDHHS is going at least 12 months back for claims, just not farther back.

Federal regulations do not refer to recoupment specialist referral dates; instead, federal regulations utilize a standard of when an agency is "aware" of an overissuance. The federal regulations do not define when an agency is "aware" of an overissuance. At the hearing, MDHHS contended that awareness occurs when the overissuance stops (i.e. the case is corrected). Thus, MDHHS contends that the proper standard for beginning an OI period is going back 12 months from the end of the overissuance. Applying this standard is problematic because MDHHS can stop a benefit overissuance without being aware that one occurred. The most definitive evidence of MDHHS's awareness of an overissuance is proof of referral to a recoupment specialist. By specifically stating that agency errors are limited to periods going back 12 months from a recoupment specialist referral, MDHHS policy establishes that awareness of an overissuance occurs when an overissuance claim is referred to recoupment.

Though MDHHS policy includes a contradictory example, given the literal interpretation of its policy and federal regulations, it is found that MDHHS policy intended to limit claims caused by agency errors to 12 months from the date of recoupment specialist referral. As MDHHS seeks to pursue recoupment against Petitioner for an OI period from beyond 12 months from recoupment specialist referral, MDHHS is precluded from establishing an OI against Petitioner.


**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 \$1,752 in allegedly overissued FAP benefits from April 2017 through March 2018. 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 \$1,752 as a claim against Petitioner; and
- (2) If necessary, return any previously recouped benefits.

The MDHHS request to establish against Petitioner a recipient claim is **DENIED**.

CG/jem

  
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**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-Wayne-55-Hearings  
MDHHS-Recoupment  
BSC4-HearingDecisions  
M. Holden  
D. Sweeney  
MOAHR

**Petitioner – Via USPS:**

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