



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: September 25, 2020
MOAHR Docket No.: 20-005434
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 16, 2020, via telephone conference line. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Latoi Patillo, recoupment specialist. [REDACTED] Petitioner's daughter, participated as an English-Chaldean translator.

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. As of November 2017, Petitioner received ongoing employment income from [REDACTED] (hereinafter, "Employer").
2. From November 2017 through at least April 2020, Petitioner received at least \$2,213 in gross monthly employment income.
3. On [REDACTED], 2017, Petitioner submitted a Semi-Annual Contact Report to MDHHS. Petitioner reported that his group's monthly gross income did not exceed \$2,046 per month.
4. From February 2018 through April 2018, Petitioner received \$266 in monthly FAP benefits as a member of a 3-person FAP group.

5. On June 22, 2020, MDHHS calculated that Petitioner received an overissuance of \$798 in FAP benefits from February 2018 through April 2018 due to client-error. The overissuance (OI) calculation factored the following: Petitioner's actual pays from Employer, FAP issuances totaling \$798, correct issuances of \$0, and that Petitioner failed to report gross monthly income exceeding \$2,046.
6. On June 22, 2020, MDHHS sent a Notice of Overissuance to Petitioner stating that MDHHS overissued \$798 in FAP benefits to Petitioner from February 2018 through April 2018 due to client-error.
7. On ██████████ 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 attempt to establish a recipient claim related to allegedly overissued FAP benefits. Exhibit A, pp. 4-5. A Notice of Overissuance dated June 22, 2020, stated that Petitioner received \$798 in overissued FAP benefits from February 2018 through April 2018 due to client-error. 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 (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.¹ 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. As MDHHS alleged a claim

¹ 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 FAP benefits to Petitioner were expunged.

exceeding \$250, MDHHS is not barred from establishing a recipient claim if it exceeds \$250.

MDHHS specifically alleged that Petitioner received an OI of FAP benefits by failing to report that his monthly income exceeded simplified reporting income limits. FAP groups with countable earnings are assigned to the simplified reporting (SR) category. BAM 200 (January 2017) p. 1. Simplified reporting groups are required to report only when the group's actual gross monthly income exceeds the income limit for their group size. *Id.* No other change reporting is required. *Id.*

State agencies may establish a simplified reporting system. 7 CFR 273.12(a)(5). A household subject to simplified reporting must report when its monthly gross income exceeds the monthly gross income limit for its household size, as defined at § 273.9(a)(1). 7 CFR 273.12(a)(1)(H)(v). The simplified reporting income limit is 130% of the federal poverty level. *Id.*

As a member of a 3-person FAP group with employment income, it was not disputed that Petitioner was a simplified reporter as of November 2016. The simplified reporting income limit for a group of 3 persons during the alleged OI period was \$2,213. RFT 250 (October 2017) p. 1.

MDHHS presented documentation of Petitioner's income history from Employer. Exhibit A, pp. 28-29. Petitioner's total gross monthly income from Employer is as follows:

<u>Benefit month</u>	<u>Gross Income</u>
November 2018	\$2,493
December 2018	\$3,451
January 2018	\$3,073
February 2018	\$2,689
March 2018	\$3,254
April 2018	\$2,590

Notably, Petitioner's gross income exceeded simplified reporting income limits for every month from November 2017 through the end of the alleged OI period (April 2018).

MDHHS presented FAP-OI budgets from February 2018 through April 2018 demonstrating how an OI was calculated. Exhibit A, pp. 15-21. In compliance with policy, the FAP-OI budget factored Petitioner's actual income from Employer for each benefit month. BAM 715 (October 2017) p. 7. MDHHS testimony credibly stated that other income and expenses were not changed from the original FAP budgets. MDHHS factored that Petitioner's actual issuances were \$266 during each alleged OI month; these issuances were verified by documentation of Petitioner's past issuances. Exhibit A, p. 14. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$798 was calculated.

Typically, when MDHHS calculates an OI based on a client's failure to accurately report employment income, MDHHS budgets at least a portion of a client's income as unreported. This is relevant to an OI because MDHHS only counts 80% of a client's timely reported employment income. In the present case, none of Petitioner's income was budgeted as

unreported. Though the budgets were not calculated as if Petitioner failed to report income, MDHHS nonetheless alleged the OI was still caused by Petitioner's error.

To support its claim of an error caused by Petitioner, MDHHS presented Petitioner's Semi-Annual Contact Report dated December 8, 2017. Exhibit A, pp. 33-39. Petitioner reported that his gross monthly income did not change by more than \$100 from the \$2,046 in income factored in Petitioner's ongoing FAP eligibility. Petitioner's response was erroneous as his income was \$2,493 in November 2017. November 2017 was not a one-time exception as Petitioner's gross monthly income exceeded \$2,500 thereafter, through at least the end of the OI period.

Aside from Petitioner's inaccurate response on the Semi-Annual Contact Report, Petitioner had ongoing reporting requirements as a simplified reporter. MDHHS sent Petitioner a Notice of Case Action dated January 12, 2018. The notice advised Petitioner that he was a simplified reporter and required to report when his gross monthly income exceeded \$2,177. Exhibit A, pp. 23-26. Petitioner did not allege that he timely reported to MDHHS when his income exceeded simplified reporting income limits.

MDHHS delayed beginning an overissuance period until February 2018 despite Petitioner exceeding simplified reporting income requirements months earlier. Such a delay is proper for simplified reporting client-errors as MDHHS allows time for the client to report changes (see BAM 105), MDHHS to process changes (see BAM 220), and the full negative action suspense period (see *Id.*) after the first full month when a client's income exceeds simplified reporting income limits. BAM 715 (October 2017), p. 5.

The evidence established that Petitioner's failure to report monthly gross employment income exceeding simplified reporting income requirements resulted in \$798 in FAP benefits overissued to Petitioner from February 2018 through April 2018. Thus, MDHHS established a recipient claim of \$798 against Petitioner.

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 \$798 for FAP benefits overissued to Petitioner from February 2018 through April 2018 due to client-error. The MDHHS request to establish a recipient claim of \$798 against Petitioner 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-Macomb-36-Hearings
BSC4 Hearing Decisions
MDHHS-Recoupment
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

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