



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], MI [REDACTED]

Date Mailed: December 11, 2020
MOAHR Docket No.: 20-006475
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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, an administrative hearing was held on November 4, 2020.

Petitioner personally testified unrepresented.

The Michigan Department of Health and Human Services (Department) was represented by Jody Anderson, Recoupment Specialist.

Department Exhibit A.32 was offered and admitted into the record.

ISSUE

Did the Department properly determine that Petitioner was required to pay a recoupment?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner had a Food Assistance Program (FAP) case opened in 2009.
2. Petitioner's initial eligibility for FAP was based on SSI income only.
3. At an undocumented point, the Department switched Petitioner's FAP benefits to the MICAP program. No evidence of record shows that Petitioner was issued notice of being enrolled under the MICAP program and/or of any reporting requirements specific to the MICAP program.

4. In January 2020, Petitioner began receiving RSDI income which the Department had notice of pursuant to an SOLQ.
5. The Department failed to close Petitioner's MICAP FAP case in January 2020 and failed to issue any Case Action to Petitioner as to his eligibility for FAP in other FAP programs.
6. In September 2020, the Department incorrectly determined that Petitioner committed client error in failing to report RSDI income.
7. The Department subsequently reversed its position on client error, realizing that the error was caused by agency error. On October 12, 2020, the Department issued a Notice of Overissuance, due to Agency Error for \$1,358.00 for the period from March 2020 to September 2020. The Department failed to calculate Petitioner's eligibility or run FAP budgets.
8. Petitioner should have been eligible for FAP benefits from March 2020 to September 2020. Testimony of Department witness.
9. On September 15, 2020, the Department testified that it issued Notice of Case Closure. Testimony of Department Witness. The Department failed to include the notice in the evidentiary packet.
10. Petitioner was not required to report RSDI income beginning as the Department is given this information on an SSA SOLQ. Department witness testimony; Exhibit A.1-4.
11. On October 6, 2020, Petitioner filed a hearing request disputing the recoupment.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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. The Department (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.

The purview of an Administrative Law Judge is to review the Department's action, and, to make a determination if the evidence of record supports that action taken by the Department. After the Department meets its burden of going forward, Petitioner has burden of proof to show that the action is not support by the evidence and is contrary to

law or policy. ALJs do not have any jurisdiction to deviate from law or policy due to individual circumstances.

In an administrative hearing, the Department representative is required to present relevant and accurate evidence to meet its burden of going forward regardless of whether that individual personally took the action or another individual within the MDHHS. Testimony that there is no evidence to present because a 'different individual took the action' outside the recoupment office is still an action taken by the Department. The Department representative's testimony that the 'local office' is not part of the MDHHS cannot be given any weight, as it is a well-established fact that a Michigan County DHS is part of the MDHHS. A representative for the Department at an administrative hearing represents the Department, not individuals. If anyone within the Department failed to take an action as required by federal or state law, or Department policy, then the Department has failed to follow law or policy and the Department cannot be found to have met its burden of going forward.

Here, the Department is requesting that Petitioner repay an agency error overissuance of FAP benefits issued under the MICAP program. The Department further requests that these benefits be repaid even though Petitioner would have been eligible for FAP benefits outside the MICAP program, and that the Department did not process overissuance FAP budgets as such is something that the 'local office' should have done, and not the 'recoupment office.' Nor did the Department include a purported September 15, 2020 Notice of Case Action in the evidentiary packet, on the grounds that the local office issued that notice and not the recoupment office. In addition, the Department made multiple references to an "LAOQ" but was not sure what it was.

Evidence of record indicates that Petitioner was not eligible for the MICAP FAP program on the grounds that he began receiving RSDI income in January 2020. See BEM 618. However, the Department failed to act on this information, which was actually an agency error, until September 2020, nine months later. Nevertheless, the Department testified that Petitioner would have been eligible for FAP benefits outside the MICAP FAP program.

Policy requires the Department to assess the most beneficial program for which Petitioner is eligible. BAM 700, 705. In addition, the Department stipulated that the Department erred in failing to close the MICAP FAP case and issue notice to Petitioner that he should contact his worker to have a different FAP benefits case opened up outside the MICAP FAP program. The Department purportedly issued this notice in September 2020, but failed to include it in the evidentiary packet as 'the local office' issued this notice. In addition, at that point, the MDHHS decided to recoup the FAP benefits from Petitioner. While policy does require recoupment where there has been an overissuance of benefits, here, the Department testified that Petitioner would have been eligible for FAP benefits. Overissuance policy and procedure requires that the Department calculate the amount of the overissuance, by deducting what a beneficiary actually received, from what the individual should have received. BAM 700; 705. Here,

the Department failed to make this calculation or run the FAP budgets required to make an overissuance determination. BAM 700 and 705.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it issued notice to recoup without making a calculation as to Petitioner's overissuance.

DECISION AND ORDER

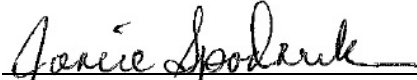
Accordingly, the Department's decision to recoup is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the \$1,358.00 FAP overissuance entry from the BRIDGES system, and
2. Recalculate Petitioner's FAP eligibility from March 2020 through September 2020, based on FAP budgets including Petitioner's SSI and RSDI income, and if necessary, give Petitioner an opportunity to verify any income and/or expenses necessary to run the FAP budgets, and
3. If eligible for any FAP benefits, give Petitioner the COVID allotment required by law and policy, and
4. Issue new notice to Petitioner to inform him of the outcome of the new calculation, along with his hearing rights, and
5. Give Notice to Petitioner in the new notice that he shall have right to an administrative hearing for 90 days from the date of the new notice should he dispute the new FAP eligibility determination.

IT IS SO ORDERED.

JS/ml



Janice Spodarek
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

DHHS Department Rep.

MDHHS-Recoupment – via electronic mail
235 S Grand Ave
Suite 1011
Lansing, MI 48909

DHHS

Nicolette Vanhavel
DHS MI_CAP SSPC – via electronic mail

Petitioner

██████████ – via first class mail
██████████
██████████, MI ██████████