



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: February 17, 2021  
MOAHR Docket No.: 20-007030  
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 via telephone conference on February 11, 2021. Petitioner participated and was unrepresented. [REDACTED] and [REDACTED], Petitioner's daughters, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Minnie Egbonu, recoupment specialist.

### **ISSUE**

The issue is whether MDHHS properly established a basis for recoupment against Petitioner due to allegedly 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. From May 2018 through April 2019, Petitioner received \$4,231 in FAP benefits based on monthly medical expenses exceeding \$3,000.
2. From May 2018 through February 2019, Petitioner had actual monthly medical expenses of \$350.
3. For March 2019 and April 2019, Petitioner had actual monthly medical expenses of \$816.
4. On September 5, 2019, Petitioner's case was referred to the recoupment unit.

5. On November 22, 2019, MDHHS calculated that Petitioner received an overissuance totaling \$4,231 in FAP benefits from May 2018 through April 2019 due to over-budgeted medical expenses.
6. On November 22, 2019, MDHHS sent Petitioner a Notice of Overissuance stating that Petitioner received \$4,231 in overissued FAP benefits from May 2018 through April 2019 due to MDHHS's error.
7. 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's attempted recoupment of allegedly overissued FAP benefits. Exhibit A, p. 4. A Notice of Overissuance and related summary dated November 22, 2019, alleged that Petitioner received \$4,231 in over-issued FAP benefits from May 2018 through April 2019 due to MDHHS's error in over-budgeting medical expenses. 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 FAP 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 a higher alleged overissuance, MDHHS is not barred from pursuing recoupment, as long as the overissuance is established to exceed \$250.

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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 benefits issued to Petitioner were expunged.

Clients requesting hearings disputing agency-error overissuances typically contend that they should not be required to repay an overissuance caused by MDHHS's error. Such an argument is based in equity; in other words, it is unfair to make a client repay benefits for a mistake by MDHHS. Though an argument of equity is reasonable, federal regulations and MDHHS policy each authorize MDHHS to recoup benefits even when caused by MDHHS's error. Thus, MDHHS is not barred from establishing an OI against Petitioner even though the FAP benefits may have been issued due to MDHHS's error.<sup>2</sup>

MDHHS does limit the overissuance period for agency-caused FAP errors. The OI period begins the first month when the benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the recoupment specialist, whichever period is later. *Id.*, p. 5. MDHHS calculated the OI period from the date that Petitioner's case was corrected. Though MDHHS policy provides an example of calculating an OI period from the date of case correction, its policy unequivocally states that OI periods for agency errors are calculated from the date of recoupment specialist referral. BAM 705 (October 2018) p. 5. Given the unequivocal written policy, MDHHS will be limited to an OI period going 12 months back from the recoupment specialist referral date.

MDHHS referred the matter to a recoupment specialist on September 5, 2019. Exhibit A, p. 80. Going back 12 months from the referral date precludes an OI earlier than September 2018. MDHHS seeks recoupment for an overissuance period beginning May 2018. Due the restrictions on OI periods for agency errors, MDHHS is precluded from establishing an OI period from May 2018 through August 2018. A FAP-OI summary calculated an OI totaling \$1,408 from May 2018 through August 2018. Exhibit A, p. 9.

Given the evidence, MDHHS will be denied \$1,408 of its attempted OI claim for the period of May 2018 through August 2018. The analysis will proceed to consider the alleged OI for September 2018 through April 2019.

The basis of the OI was MDHHS's alleged failure to properly budget Petitioner's medical expenses. A FAP budget from May 2018 credited Petitioner with \$3,047 in countable medical expenses. Exhibit A, p. 17. MDHHS credibly testified that the same medical expense credit continued throughout the alleged OI period. In calculating Petitioner's correct FAP eligibility, MDHHS determined that Petitioner had actual monthly medical expenses of \$350 from May 2018 through February 2019 and \$816 in monthly medical expenses (see Exhibit A, p. 50) from March 2019 through April 2019. Petitioner's testimony acknowledged that the updated expenses were accurate.

MDHHS presented FAP-OI budgets from May 2018 through April 2019 demonstrating how an OI was calculated. Exhibit A, pp. 20-43. MDHHS credibly testified that the same income, group size, and expenses were used from the original budgets other than the reduction in monthly medical expenses. Actual FAP issuances totaling \$4,231 were taken from documentation of Petitioner's issuance history. Exhibit A, p. 15. Petitioner did

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<sup>2</sup> County circuit courts and higher may consider an argument of equity.

not dispute any of the calculations involved in the OI. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$4,231 was properly calculated. From September 2018 through April 2019, an OI totaling \$2,823 was calculated.

Petitioner testified that she is unable to afford repayment of the OI. 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.* MDHHS limits jurisdiction to determining hardships to its own agency. Thus, administrative hearing jurisdiction cannot be extended to consider whether Petitioner is eligible for a hardship. This information is only noted to inform Petitioner of the process for reduction or elimination of the overissuance.

The evidence established that Petitioner received an OI of \$2,823 in FAP benefits from September 2018 through April 2019 due to agency-error. The evidence further established that MDHHS employed proper procedures in establishing an OI. Thus, MDHHS's attempt to establish a claim of \$2,823 of a total claim of \$4,231 must be affirmed.

**DECISION AND ORDER**


The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly established a recipient claim of \$2,823 for FAP benefits overissued to Petitioner from September 2018 through April 2019 due to agency-error. Concerning \$2,823 of the alleged OI totaling \$4,231, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a recipient claim against Petitioner for \$1,408 in FAP benefits issued from May 2018 through August 2018. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reduce the OI claim against Petitioner by \$1,408; and
- (2) If necessary, return any previously recouped benefits.

Concerning \$1,408 of the alleged OI totaling \$4,231, the actions taken by MDHHS are **REVERSED**.

CG/tm

  
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**Christian Gardocki**  
Administrative Law Judge  
for Elizabeth Hertel, 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-3-Hearings  
M. Holden  
D. Sweeney  
MDHHS-Recoupment-Hearings  
BSC4  
MOAHR

**Petitioner – Via First-Class Mail:**

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