



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 5, 2021
MOAHR Docket No.: 20-007864
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 January 27, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Julie Barr, recoupment specialist.

ISSUE

The issue is whether MDHHS properly established a recoupment claim against Petitioner for 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. On [REDACTED] 2019, Petitioner applied for FAP benefits and reported no employment income and a household of five persons. All persons in Petitioner's household were non-senior, non-disabled, not SSI recipients, and not recipients of cash assistance. Additionally, Petitioner reported \$975 for housing and \$270 for dependent care monthly expenses. Exhibit A, pp. 18-29.
2. On September 20, 2019, MDHHS approved Petitioner for FAP benefits beginning September 2019 based on zero employment income. Exhibit A, pp. 39-44.
3. On an unspecified date before November 2019, Petitioner verified a \$975 monthly rental expense.

4. From November 29, 2019, through May 2020, Petitioner received employment income from [REDACTED] (hereinafter, "Employer").
5. On December 12, 2019, Petitioner reported to MDHHS employment income from Employer.
6. From February 2020 through May 2020, Petitioner received at least \$4,615 in monthly gross employment income from Employer.
7. From February 2020 through May 2020, Petitioner received \$2,584 in FAP benefits based on zero employment income.
8. On April 30, 2020, Petitioner's case was referred to the recoupment unit.
9. On November 17, 2020, MDHHS calculated that Petitioner received an OI totaling \$2,584 in FAP benefits from February 2020 through May 2020 due to reported, but unbudgeted, income from Employer and zero housing and dependent care expenses.
10. On November 18, 2020, MDHHS sent Petitioner notice of an OI of \$2,584 in FAP benefits from February 2020 through May 2020 due to MDHHS's error.
11. 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, pp. 8-10. A Notice of Overissuance and related summary dated June 20, 2020, alleged that Petitioner received \$2,584 in over-issued FAP benefits from February 2020 through May 2020 due to MDHHS's failure to budget Petitioner's income from Employer. Exhibit A, pp. 73-78.

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 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 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.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 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 pursuing recoupment if the OI is established to exceed \$250.

Petitioner credibly testified that he was unaware that he received FAP benefits that MDHHS should not have been issued. Because MDHHS was to blame for the OI, Petitioner contended that he should not be required to repay MDHHS. Petitioner’s argument is based in equity; in other words, it is inequitable to have a client pay for a mistake caused by MDHHS. Equitable remedies are not available in administrative hearings unless authorized by benefit regulations. Federal regulations and MDHHS policy each authorize the recoupment of benefits even when caused by MDHHS’s error.² Thus, MDHHS is not barred from establishing an OI against Petitioner even though it was caused by its own error.

For OIs caused by MDHHS, OIs period are limited. The OI period begins the first month when 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. In the present case, MDHHS seeks recoupment for an overissuance period beginning February 2020. A recoupment specialist credibly testified receiving a referral on April 30, 2020. Going back 12 months from the referral date precludes an OI any earlier than April 2019. As MDHHS seeks an OI within 12 months of the recoupment referral date, MDHHS is not barred from establishing an OI.

MDHHS delayed beginning an overissuance period until February 2020 despite earlier employment with Employer. The delay is compliant with policy which requires beginning the OI period for agency-errors in the first full benefit month after allowing time for the client to report changes (see BAM 105), MDHHS’s time to process changes (see BAM 220), and the full negative action suspense period (see *Id.*). BAM 705 (October 2018), pp. 5-6.

The basis of the OI was MDHHS’s alleged failure to budget employment income. It was not disputed that Petitioner timely reported employment income on a Change Report submitted to MDHHS on December 12, 2019. Exhibit A, pp. 30-31. Despite Petitioner’s reporting, MDHHS did not budget the income until after May 2020.

¹ Additionally, MDHHS is to subtract any benefits that were expunged (i.e., unused benefits which eventually expire from non-use). MDHHS presented Petitioner’s FAP expenditures which verified that all FAP benefits issued to Petitioner were spent. Exhibit A, pp. 68-72.

² Equitable remedies may be available upon appeal to circuit or higher courts of jurisdiction.

As part of its recoupment process, MDHHS obtained Petitioner's income records from Employer. Exhibit A, pp. 51-57. The records verified the following gross monthly employment income issued to Petitioner:

| | |
|---------------|------------|
| February 2020 | \$4,615.38 |
| March 2020 | \$4,615.38 |
| April 2020 | \$4,500.00 |
| May 2020 | \$6,923.07 |

MDHHS presented FAP-OI budgets from February 2020 through May 2020 demonstrating how an OI was calculated. Exhibit A, pp. 59-67. Each FAP-OI budget factored the gross amount of income from Employer. For FAP benefits, generally, MDHHS counts gross employment income.³ BEM 501 (January 2020), p. 6. The FAP-OI budgets factored Petitioner's actual issuances consistent with documentation listing Petitioner's past FAP issuances. Exhibit A, p. 36. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$2,584 was calculated.

The recoupment specialist credibly testified that the FAP-OI budgets factored the same income and expenses from the original FAP budgets other than including Petitioner's income from Employer. Generally, rehashing whether expenses were properly factored in the original budgets is not relevant to determining an OI amount. The generality is based on clients having an opportunity to dispute FAP eligibility during the time of original issuances. Clients have 90 days from the notice of benefit issuance to request hearings. Presumably, more than 90 have passed since Petitioner received written notice of issuances from May 2020 and earlier. The present case justifies an exception to the generality. First, Petitioner would have little reason to dispute unbudgeted expenses if he is receiving the maximum FAP issuance for the group. Secondly, because the OI is due to MDHHS's error, there is more equity in considering whether MDHHS properly budgeted a client's expenses.

Notably, the FAP-OI budgets listed \$0 for rental expenses. During the hearing, MDHHS testimony acknowledged that Petitioner reported and verified a rental expense of \$975 before the alleged OI period. MDHHS's failure to factor a properly reported and verified rental expense may, but not necessarily, render all FAP-OI budgets to be improper.

MDHHS credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation (housing + utility credits). BEM 556 (January 2020) pp. 4-6. For each alleged OI month, Petitioner's adjusted gross income was more than double his unbudgeted rent and utility credits. In such cases, Petitioner's excess shelter deduction would be \$0: the same as calculated by MDHHS in the FAP-OI budgets. Thus, the OI would be unchanged even after factoring a rent of \$975. However, there was yet another unbudgeted expense by MDHHS.

³ Exceptions to counting gross wages includes the following: earned income tax credits, striker earnings, income for census work, flexible benefits, and student earnings disregard. There was evidence that Petitioner was a student; however, the disregard only applies to persons under 18. Petitioner was the father of several children and presumably not under 18 years of age. Thus, a student disregard is not applicable.

The FAP-OI budgets also did not factor any dependent care expenses for Petitioner. Petitioner reported \$270 in monthly dependent care expenses on his application. Exhibit A, p. 28. If Petitioner was ineligible to receive dependent care expenses, then MDHHS properly did not factor the expenses in calculating an OI. Unfortunately, insufficient evidence was presented to determine whether MDHHS properly factored no dependent care expenses. If MDHHS incorrectly did not budget dependent care expenses, then Petitioner's adjusted gross income and excess shelter *may* be different enough to affect the calculated OI.⁴

Due to the improper rental expense and potentially improper dependent care expense, it cannot be determined whether an OI was properly calculated. Thus, the requested recoupment claim of \$2,584 cannot be affirmed.

⁴ Emphasis is given to "may". It is possible that even after factoring dependent care and rent expenses that Petitioner is still ineligible to receive FAP benefits. If MDHHS repursues the claim after recalculating the OI, Petitioner may again request a hearing to dispute the updated claim. If an OI claim is later established, Petitioner can request reduction or elimination of the claim 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.*


DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish an overissuance of FAP benefits against Petitioner. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Delete the recipient claim against Petitioner for \$2,584 in FAP benefit allegedly over-issued from February 2020 through May 2020 due to agency-error; and
- (2) Supplement Petitioner for any FAP benefits previously recouped.

The actions taken by MDHHS are **REVERSED**.

CG/tm



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-906EUP-Hearings
M. Holden
D. Sweeney
MDHHS-Recoupment-Hearings
BSC3
MOAHR

Petitioner – Via First-Class Mail:

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