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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

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DIRECTOR

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Date Mailed: April 2, 2021
MOAHR Docket No.: 21-000243
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

AMENDED HEARING DECISION

This Hearing Decision is an amendment of a Hearing Decision dated March 26, 2021. The only change is the recoupment amount is corrected from \$3,355 to \$3,335 in the Decision and Order.

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 line on March 17, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Swanzetta Wilson, recoupment specialist.

ISSUES

The first issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner due to client error.

The second issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner due to agency error.

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 October 3, 2014, through at least January 2018, Petitioner received ongoing biweekly income from ██████████ (hereinafter, "Employer").
2. On ██████████, 2016, Petitioner applied for FAP benefits and reported recently stopped employment with Employer and a final pay from employment on

September 30, 2016. Boilerplate stated to report changes in income to MDHHS within 10 days.

3. On October 18, 2016, MDHHS sent Petitioner a Notice of Case Action approving Petitioner for FAP benefits beginning October 2016 based on \$0 employment income. Boilerplate stated to report changes in income to MDHHS within 10 days. Exhibit A, pp. 37-40.
4. From October 2016 through August 2017, Petitioner received a total of \$3,666 in FAP benefits based on \$0 income from Employer.
5. On July 26, 2017, MDHHS was informed via wage match that Petitioner had unbudgeted employment income from Employer.
6. As of August 2020, Petitioner had not reported to MDHHS income from Employer.
7. On September 23, 2017, Petitioner submitted a Redetermination to MDHHS stating that she received unspecified income.
8. From September 2017 through January 2018, Petitioner received a total of \$1,765 in FAP benefits based on \$0 employment income from Employer. Of the issued FAP benefits, \$3.44 were expunged.
9. On December 9, 2017, Petitioner's case was referred to a recoupment specialist.
10. On January 14, 2021 MDHHS calculated that Petitioner received an OI of \$3,335 in FAP benefits from October 2016 through August 2017 due to unreported income from Employer.
11. On January 14, 2021, MDHHS sent a Notice of Overissuance to Petitioner stating that Petitioner received \$3,335 in over-issued FAP benefits from October 2016 through August 2017 due to client-error.
12. On January 20, 2021 MDHHS calculated that Petitioner received an OI of \$1,750 in FAP benefits from September 2017 through January 2018 due to unbudgeted income from Employer.
13. On January 20, 2021, MDHHS sent a Notice of Overissuance to Petitioner stating that Petitioner received \$1,750 in over-issued FAP benefits from September 2017 through January 2018 due to agency error.
14. On [REDACTED], 2021, Petitioner requested a hearing to dispute two alleged OIs covering October 2016 through January 2018

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 two recipient claims related to allegedly overissued FAP benefits. Exhibit A, pp. 3-6. A Notice of Overissuance dated January 14, 2021, stated that Petitioner received \$3,335 in over-issued FAP benefits from October 2016 through March 2017 due to client-error. Exhibit A, pp. 90-95.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the OI. BAM 700 (January 2016), pp. 1-2. An OI 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 OI. *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. Expunged benefits (i.e., unused benefits which eventually expire from non-use) from the claim. CFR 273.18(c)(1). There was no evidence of expunged benefits from the OI period.

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 or agency errors when they exceed \$250. BAM 715 (October 2017), p. 7.

Concerning the OI from October 2016 through August 2017, MDHHS alleged that Petitioner failed to timely report income from Employer. An OI based on a failure to report income requires establishing that Petitioner had an obligation to report income.

Certified change reporting households are required to report the starting of employment income. 7 CFR 273.12(a). Such changes must be reported to state agencies within 10 days.¹ *Id.* Change reporters differ from simplified reporters who are required to report only when the group's actual gross monthly income exceeds the simplified reporting income limit for their group size; no other reporting is required. BAM 200 (December 2013) p. 1. Simplified reporters are groups with reported countable earnings. *Id.*, p. 1.

¹ Federal regulations allow state agencies to delay reporting until 10 days after the month of change. MDHHS requires that changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105 (October 2016) p. 1.

Petitioner's application dated [REDACTED] 2016, requesting FAP benefits reported recently stopped employment income with Employer. Exhibit A, pp. 10-36. Petitioner's reporting of no ongoing employment income is consistent with being a change reporter as of October 2016. During the hearing, Petitioner did not allege that she was a simplified reporter nor did evidence suggest reported employment earnings during the alleged OI period.

MDHHS presented theworknumber.com records from Employer listing Petitioner's income history. Exhibit A, pp. 51-55. The records verified that Petitioner received regular biweekly income from Employer on October 3, 2014, through at least January 2018.²

Given the evidence, Petitioner was a change reporter and obligated to report any restarting of income from Employer. Petitioner reported on her application receiving a final pay on September 30, 2016. Exhibit A, p. 20. Assuming that Petitioner's income temporarily stopped as of September 30, 2016, she was required to report the restarting of income to MDHHS no later than October 14, 2016.

Petitioner testified that she submitted pay documents from Employer to MDHHS shortly after restarting work with Employer.³ The recoupment specialist testified in response that a check of Petitioner's electronic case file (ECF) displayed no income documents returned by Petitioner from September 30, 2016 through the end of the alleged OI period. The recoupment specialist testified that Petitioner's first written reporting of ongoing receipt income from Employer was on a Redetermination form dated September 23, 2017, on which an unspecified income was reported.⁴ Exhibit A, pp. 43-49. Thus, Petitioner's claim of a timely reporting of income from Employer was uncorroborated.

The OI period begins the first month that a benefit issuance exceeds the amount allowed by policy or 72 months before the date it was referred to the RS, whichever is later. To determine the first month of the OI period, 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.*). BAM 715 (October 2017), p. 5.

MDHHS began an OI period in October 2016. An OI beginning October 2016 is proper for unreported income at application. If Petitioner had a change in income as of October 2016, MDHHS would be obliged to start the OI the first full month after the lapse of 32 days: December 2016.

² MDHHS testified that Petitioner disputed the income records during a pre-hearing conference. In response, MDHHS asked for tax records from 2016 and 2017. Petitioner returned W-2s from 2016 and 2017 which corroborated the accuracy of theworknumber.com documents. Exhibit A, pp. 59-60.

³ Petitioner also testified that she briefly held "on-call" employment with a casino and submitted pay documents to MDHHS from that employment. Petitioner's testimony is not relevant to establishing an OI, but there was also no evidence of Petitioner submitting pay records from her casino employment.

⁴ MDHHS alleged that Petitioner's failure to specify that the income was from Employer was further support of deceit and/or a failure to report by Petitioner.

Petitioner's income history with Employer verified that Petitioner received \$997.15 on September 30, 2016, and \$1,540 on October 14, 2016, and continuous biweekly income thereafter. Petitioner's pay history implies, at most, a very brief break in employment in October 2016. Notably, MDHHS documented on October 14, 2016, that Petitioner reported loss of employment during an interview regarding her application. Exhibit A, p. 9. Given Petitioner's continuous biweekly record of income, the evidence did not establish a break in income in October 2016. The evidence established that MDHHS properly started an OI period in October 2016 and that Petitioner was at fault for not timely reporting income from Employer.

MDHHS presented FAP-OI budgets from October 2016 through August 2017. Exhibit A, pp. 67-87. MDHHS calculated an OI based on \$3,666 in actual FAP issuances during the OI period from documentation listing Petitioner's past issuances. Exhibit A, pp. 65-66. A recoupment specialist credibly testified that the FAP-OI budgets factored the income, expenses, and group size from the original budgets other than including Petitioner's actual income from Employer.⁵ MDHHS budgeted all employment income as untimely reported, thereby denying a 20% employment income credit.⁶ Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$3,335 was calculated.

The evidence established that Petitioner's failure to report employment income resulted in \$3,335 in FAP benefits overissued to Petitioner from October 2016 through August 2017. Thus, MDHHS established a recipient claim of \$3,335 against Petitioner.

Petitioner also requested a hearing to dispute a second recipient claim related to allegedly overissued FAP benefits. Exhibit A, pp. 3-6. A Notice of Overissuance dated January 20, 2021, stated that Petitioner received \$1,750 in over-issued FAP benefits from September 2017 through January 2018 due to agency-error. Exhibit A, pp. 113-118.

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 inequitable to have a client pay for a mistake caused 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 caused by its own error.

MDHHS does limit the OI period for agency-caused FAP errors. 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 OI period beginning September 2017. MDHHS referred the matter to a recoupment

⁵ Factoring gross income is compliant with employment income policy (BEM 501) and factoring actual pays is compliant with policy directing how to calculate an overissuance based on client error (BAM 715).

⁶ MDHHS is to deny the 20% credit for employment income when calculating an OI based on untimely reported employment income. BAM 715 (October 2017) p. 8.

specialist on December 9, 2017. Going back 12 months from the referral date precludes an OI any earlier than December 2016. As MDHHS seeks an OI beginning September 2017, MDHHS is not barred from doing so.

MDHHS specifically alleged that Petitioner's continued income from Employer went unbudgeted causing the OI. MDHHS accepted responsibility for the OI because of an unprocessed wage match dated July 26, 2017. Exhibit A, p. 50.

MDHHS routinely matches recipient employment data with the Michigan Talent Investment Agency and the Unemployment Insurance Agency through computer data exchange processes. BAM 802 (April 2017) p. 1. MDHHS submits client Social Security Numbers to TIA quarterly to be cross-matched with the work history records submitted by Michigan employers. *Id.* This information is compared to the client's gross earnings records. *Id.* Specialists receive a task and reminder listing all the matches for the quarter when there is a significant discrepancy between TIA and MDHHS records. *Id.* Wage match information must be resolved within 45 calendar days of receiving the wage match task and reminder. *Id.*, p. 3.

MDHHS began the OI period for agency error September 2017. If there was no other OI, MDHHS would be obliged to begin an OI period no earlier than October 2017 to allow for the first full month following 45 days after the date of wage match. In the present case, MDHHS established an earlier OI due to a client-caused error. Thus, starting an agency-caused OI period immediately after the client-caused OI period is not unjust to Petitioner. Also, the evidence established a reporting of income by Petitioner no earlier than September 23, 2017. An agency caused OI beginning September 2017 is proper for unbudgeted income reported in September 2017.

MDHHS presented FAP-OI budgets from September 2017 through January 2018. Exhibit A, pp. 102-112. MDHHS calculated an OI based on \$1,765 in actual FAP issuances during the OI period from documentation listing Petitioner's past issuances. Exhibit A, pp. 99-101. A recoupment specialist credibly testified that the FAP-OI budgets factored the income, expenses, and group size from the original budgets other than including Petitioner's actual income from Employer.^{7 8} MDHHS budgeted all employment income as timely reported. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$1,750 was calculated.

MDHHS presented documentation of Petitioner's expunged FAP benefits. Exhibit A, p. 101. The documentation indicated that \$3.44 in FAP benefits issued to Petitioner during the OI

⁷ Factoring gross income is compliant with employment income policy (BEM 501) and factoring actual pays is compliant with policy directing how to calculate an overissuance based on agency error (BAM 705).

⁸ MDHHS presented FAP budget documents from September 2017 listing the income, group size, and expenses used in the original FAP budget. Exhibit A, pp. 96-98. MDHHS noted that Petitioner's expenses were not listed in some of the FAP-OI budgets. MDHHS explained that expenses are not included in FAP-OI budgets when a client is ineligible for FAP benefits due to excess gross income.

period. MDHHS should have reduced the OI by the expunged amount but did not. Thus, MDHHS will be denied an OI for \$3.44 of its requested claim.

The evidence established that MDHHS's failure to timely budget Petitioner's employment income resulted in \$1,746.56 in FAP benefits overissued to September 2017 through January 2018. Thus, MDHHS established a recipient claim of \$1,746.56 due to agency error against Petitioner.

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 \$3,335 for FAP benefits overissued to Petitioner from October 2016 through August 2017 due to client-error. It is further found that MDHHS established a recipient claim of \$1,746.56 for FAP benefits over-issued from September 2017 through January 2018 due to agency error. Concerning the claim of \$3,335 and \$1,745.56 of the claim totaling \$1,750, 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 of \$3.44 for FAP benefits allegedly overissued to Petitioner from September 2017 through January 2018 due to agency-error. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reduce the \$1,750 recoupment claim against Petitioner by \$3.44; and
- (2) If necessary, return any improperly recouped benefits.

Concerning \$3.44 of the recoupment claim of \$1,750, 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-Wayne-17-Hearings
M. Holden
D. Sweeney
MDHHS-Recoupment-Hearings
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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