



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: March 31, 2021
MOAHR Docket No.: 21-000970
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 line on March 25, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Minnie Egbonu, recoupment specialist.

ISSUES

The issue is whether MDHHS established a recipient claim related to Food Assistance Program (FAP) benefits allegedly overissued to Petitioner due to client 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 January 2019 through March 2019, Petitioner's spouse, [REDACTED] (hereinafter, "Spouse"), received \$1,143.36 in employment income from [REDACTED] (hereinafter, "Employer").
2. On [REDACTED] 2019, Petitioner applied for FAP benefits and reported a household including Spouse. No employment income was reported.
3. From April 2019 through November 2019, Petitioner received a total of \$6,108 in FAP benefits based on \$0 in gross monthly employment income from Employer.
4. From April 2019 through June 2019, Spouse received \$8,843.88 in employment income from Employer.

5. From July 2019 through September 2019, Spouse received \$10,909.48 in employment income from Employer.
6. From October 2019 through December 2019, Spouse received \$4,376.98 in employment income from Employer.
7. As of November 2019, Petitioner had not reported to MDHHS Spouse's income from Employer.
8. On March 13, 2020, Petitioner's case was referred to a recoupment specialist. Exhibit A, p. 59.
9. On January 12, 2021, MDHHS calculated that Petitioner received an OI of \$5,326 in FAP benefits from April 2019 through November 2019 due to a failure to report income from Employer.
10. On January 12, 2021, MDHHS sent a Notice of Overissuance to Petitioner stating that Petitioner received \$5,326 in over-issued FAP benefits from April 2019 through November 2019 due to client error.
11. On February 19, 2021, Petitioner requested a hearing to dispute the alleged OI.

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. 3-4. A Notice of Overissuance dated January 12, 2021, stated that Petitioner received \$5,326 in over-issued FAP benefits from April 2019 through November 2019 due to client-error. Exhibit A, pp. 14-19.

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.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.

MDHHS alleged that Petitioner received an OI of FAP benefits after failing to accurately report income on an application. Petitioner applied for FAP benefits on [REDACTED] 2019 and reported no household employment income. Exhibit A, pp. 52-58. MDHHS subsequently approved Petitioner for FAP benefits based on Petitioner's reporting of no employment income.

MDHHS presented documentation listing Spouse's quarterly earnings from Employer in 2019 obtained in a data exchange with the Michigan Department of Treasury.² Exhibit A, p. 37. Spouse's income and monthly income average were as follows:

| | <u>Quarterly earnings</u> | <u>Monthly average</u> |
|----------------------------------|---------------------------|------------------------|
| January 2019 through March 2019 | \$1,143.36 | ----- |
| April 2019 through June 2019 | \$8,843.38 | \$2947.79 |
| July 2019 through September 2019 | \$10,909.48 | \$3,636.49 |
| October 2019 December 2019 | \$4,376.98 | \$1,458.99 |

Petitioner applied for FAP benefits on the third day before the end of the first quarter in 2019. Spouse's earnings exceeding \$1,000 and continued earnings throughout 2019 strongly imply that Spouse was working as of Petitioner's application date. Thus, Petitioner's reporting of no household employment income was inaccurate.

Petitioner testified that she did not even realize that she received ongoing FAP benefits because she received a letter from MDHHS stating that benefits would not be issued.³ Based on Petitioner's testimony, it can be inferred that she did not report to MDHHS that Spouse was employed. A subsequent failure to report income for Spouse is also consistent with a compilation of comments for Petitioner's case which notably did not include a documented reporting of income. Exhibit A, pp. 20-21. Also, Petitioner's testimony did not claim a reporting of income before or during the alleged OI period.

MDHHS presented FAP-OI budgets from April 2019 through November 2019 demonstrating how an OI was calculated. Exhibit A, pp. 24-40. For all months, MDHHS

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 of the benefits issued to Petitioner were expunged.

² Petitioner testified that Spouse only made approximately \$25,000 in income during 2019. Given the above figures, Spouse's testimony was accurate.

³ Petitioner's FAP expenditure history listed no expenditures between May 6, 2019 and April 29, 2020. Exhibit A, pp. 7-13. Thus, Petitioner probably did not realize that she was receiving FAP benefits for several months. Petitioner's lack of knowledge does not impact the OI analysis.

factored Spouse's averaged quarterly income from Employer. MDHHS credibly testified that other income and expenses were unchanged from the original FAP budgets.⁴ MDHHS factored Petitioner's actual issuances totaling \$6,108 from documentation listing Petitioner's past issuances. Exhibit A, p. 23. Based on Petitioner's failure to report income for Spouse, MDHHS denied a 20% credit for timely reported employment income. Using the procedures set forth in BEM 556 for determining FAP eligibility, an OI of \$5,326 was calculated.


The evidence established that Petitioner's failure to report employment income for Spouse resulted in \$5,326 in FAP benefits overissued to Petitioner from April 2019 through November 2019. Thus, MDHHS established a recipient claim of \$5,326 against Petitioner due to client error.

⁴ MDHHS presented a FAP budget from April 2019 to corroborate its testimony. Exhibit A, pp. 49-51.

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 \$5,326 for FAP benefits overissued to Petitioner from April 2019 through November 2019 due to client-error. The MDHHS actions to establish a recipient claim of \$5,326 against Petitioner are **AFFIRMED**.

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-19-Hearings
M. Holden
D. Sweeney
MDHHS-Recoupment-Hearings
BSC4
MOAHR

Petitioner – Via First-Class Mail:

