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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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Date Mailed: March 23, 2022
MOAHR Docket No.: 22-000269
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 teleconference on March 17, 2022. Petitioner, ██████████ appeared on behalf of herself. Group member, ██████████ (Husband), appeared as a witness for Petitioner. Minnie Egbonu, Recoupment Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly determine that Petitioner received a Food Assistance Program (FAP) overissuance (OI) 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. On ██████████, 2020, Petitioner filed an application for FAP for a household of nine. Petitioner reported one checking account (Checking Account 1), which had a balance of ██████████, and one savings account (Savings Account), which had a balance of ██████████ (Exhibit A, pp. 66-74). Petitioner signed the application electronically (Exhibit A, p. 66).
2. On January 18, 2022, MDHHS sent Petitioner a Notice of Overissuance indicating that Petitioner had received more benefits than she was eligible to receive for the period of July 1, 2020 to September 30, 2021 (alleged OI period) (Exhibit A, pp. 9-12). MDHHS stated that the FAP OI was \$██████████ due to client error because clients failed to report all assets to MDHHS (Exhibit A, p. 9).

3. On [REDACTED], 2022, Petitioner filed a hearing request disputing MDHHS' determination that it received an OI of FAP benefits based on client error (Exhibit A, pp. 4-5).

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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, MDHHS determined that Petitioner was overissued \$ [REDACTED] in FAP benefits from July 1, 2020 to September 30, 2021 due to client error because Petitioner failed to report all assets to MDHHS.

Pursuant to Department policy, there is a FAP asset test for all FAP groups. BEM 400 (July 2020), p. 3. A FAP asset group includes all FAP eligible members and all disqualified members. *Id.*, p. 6. A FAP group's countable assets must be \$15,000 or less. *Id.*, pp. 5-6. Savings and checking accounts are considered cash assets. *Id.*, p. 3. An asset must be available to be countable. *Id.*, p. 10. An asset is available if someone in the group has the legal right to use or dispose of the asset. *Id.* MDHHS is required to assume that the asset is available unless evidence shows that it is not available. *Id.* Asset eligibility exists when the group's countable assets are less than or equal to the application asset limit at least one day during the month being tested. *Id.*, p. 3. MDHHS will deny an application for FAP if the group has excess assets on the processing date. *Id.*, p. 4.

In this case, MDHHS presented evidence that Petitioner's FAP group was over the asset limit at the time of application. On the [REDACTED] 2020 FAP Application, Petitioner reported [REDACTED] in Checking Account 1 and \$ [REDACTED] in Savings Account. No other accounts were reported. However, the record shows that Checking Account 1 actually contained \$ [REDACTED] in July 2020 (Exhibit A, p. 45). Additionally, the FAP asset group had two other checking accounts (Checking Account 2 and Checking Account 3). In July 2020, Checking Account 2 contained \$ [REDACTED] (Exhibit A, p. 45) and Checking Account 3 contained [REDACTED] (Exhibit A, pp., 45-46).

In response, Petitioner and Husband stated that they made a mistake when they reported [REDACTED] in Checking Account 1 and explained that the money included Husband's \$ [REDACTED] disability payment from Veterans Affairs (VA) and lump sum payment of

unemployment income in the amount of \$ [REDACTED] (Exhibit 1, p. 1). Regarding the monthly VA disability payment, MDHHS counted that amount as Petitioner's Husband's monthly income, so it should not be treated as an asset, pursuant to the current income exclusion. BEM 400, p. 23. The unemployment income would be counted as an asset because lump sums and accumulated benefits are assets starting the month they are received. BEM 400, p. 17. Excluding the VA disability payment, the value of Checking Account 1 in July 2020 was \$ [REDACTED] (\$ [REDACTED] - \$ [REDACTED]).

Additionally, Petitioner and Husband stated that they did not disclose Checking Accounts 2 and 3 because those accounts belonged to their daughters and were not used to pay household expenses. Husband was listed a joint owner on those accounts because they were initiated when the daughters were still minors. Regardless, MDHHS must consider the assets of each person in the FAP asset group, which includes all eligible group members. BEM 400, p. 6. The daughters were FAP group members and therefore, their checking accounts should have been disclosed when reporting the group's assets. No evidence was presented that the funds in Checking Accounts 2 and 3 were unavailable to the owners of the account or that the funds in the accounts qualified for an applicable exclusion.

Accordingly, the group's cash assets exceeded the FAP income limit of \$15,000 at the time of application based on Checking Account 1 [REDACTED], Checking Account 2 ([REDACTED] and Checking Account 3 [REDACTED]0). The total value of Checking Accounts 1, 2, and 3 and Savings account was [REDACTED]1. If MDHHS had been aware of the value of the accounts, the group would not have been approved for FAP.

When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the OI as a recipient claim. 7 CFR 273.18(a)(2); BAM 700 (October 2018), p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 715 (October 2017), p. 6. An OI can be caused by client error, agency error, or an intentional program violation (IPV). BEM 700, pp. 5-9. An agency error is caused by incorrect action by MDHHS staff or department processes. BEM 700, p. 5. Agency errors are not pursued if less than \$250.00 per program. *Id.* Conversely, a client error occurs when the OI was due to the client giving incorrect or incomplete information to MDHHS. BEM 700, p. 7.

At the hearing, Petitioner and Husband credibly testified that they did not act intentionally and that they made a mistake regarding what needed to be reported to MDHHS. However, MDHHS is allowed to recoup benefits based on client error, which does not require a showing that the client acted intentionally to obtain more benefits than they were eligible to receive. Clients are required cooperate fully in determining initial and ongoing eligibility for benefits, which includes answering all questions on applications and forms truthfully and accurately. BAM 105 (July 2020), p. 9. Based on the inaccurate information that Petitioner provided on the FAP application, MDHHS has established that Petitioner committed a client error, which led to an OI of FAP benefits.

Regarding the amount of the OI, MDHHS alleged that Petitioner received \$ [REDACTED] during the alleged OI period (Exhibit A, p. 9). MDHHS introduced a Benefit Summary Inquiry, which shows the benefits that the group received during the alleged OI period, including ongoing benefits based on eligibility criteria and supplemental benefits based on COVID-19 policies (Exhibit A, pp. 16-21).

Due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size would receive a supplement to bring their benefit amount to the maximum for their group size. ESA Memo 2020-15 (March 2020; updated December 2020). The State of Michigan issued EA from April 2020 to December 2021. ESA Memo 2022-02 (January 2022). In addition, beginning in May 2021, MDHHS began issuing a minimum \$95 supplement to all FAP households, including households that were already receiving the maximum allotment for their household size. ESA Memo 2021-22 (May 2021). Wrongfully-issued EA are recoupable by MDHHS if the FAP household is not eligible for any FAP benefits during the month at issue.

From January 1, 2021 to September 30, 2021, FAP recipients became eligible for a 15% benefit increase in addition to their monthly allotment and the EA, pursuant to the 2021 Consolidated Appropriations Act, P.L. 116-260 (Appropriations Act), and extended by the American Rescue Plan, P.L. 117-2. Under Section 702(b)(4) of the Appropriations Act, the 15% benefit increase is not subject to recoupment. When requesting recoupment of FAP benefits from January 1, 2021 to September 30, 2021, MDHHS is required to explain how it calculated the OI amount, less the 15% benefit increase.¹

Here, the Benefit Summary Inquiry demonstrated that MDHHS calculated the OI amount by including the ongoing benefit rate and the EA and excluding the 15% benefit increase (Exhibit A, pp. 16-19). As described above, Petitioner was not eligible for FAP benefits during the alleged OI period because she failed to disclose all household assets at the time of application. Had she disclosed the assets properly, the FAP group would not have been approved for benefits. Because Petitioner was not eligible to receive any FAP benefits during this time, MDHHS is entitled to a repayment from Petitioner in the amount of \$ [REDACTED], which represents the total amount of ongoing FAP benefits and EA the household received, excluding the 15% benefit increase.

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 acted in accordance with Department policy when it determined that Petitioner received a FAP OI due to client error.

¹ Supplemental Nutrition Assistance Program (SNAP), Consolidated Appropriations Act, 2021 – Questions and Answers (February 2021), available at: <https://fns-prod.azureedge.net/sites/default/files/resource-files/Consolidated-Appropriations-Act-of-2021-Questions-and-Answers.pdf>.

DECISION AND ORDER

Accordingly, MDHHS' decision is **AFFIRMED**.



LJ/tm

Linda Jordan
Administrative Law Judge

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-Isabella-Hearings
M. Holden
D. Sweeney
MDHHS-Recoupment-Hearings
BSC2
MOAHR

Petitioner – Via First-Class Mail:

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