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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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██████████, MI ██████████

Date Mailed: March 25, 2022
MOAHR Docket No.: 22-000277
Agency No.: ██████████
Petitioner: ██████████ ██████████

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 17, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Kathleen Zewatsky, recoupment specialist.

ISSUES

The issue is whether MDHHS established against Petitioner a recipient claim for Food Assistance Program (FAP) benefits 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. On ██████████, 2020, MDHHS approved Petitioner for ongoing FAP benefits based on \$██████ employment income, \$██████ in child support income, \$0 child support expenses, \$0 dependent care expenses, \$959 in housing costs, and an obligation for heating and/or cooling.
2. As of November 2020, Petitioner was an ongoing recipient of FAP benefits with his spouse and two children. None of the household members were ██████████ (over the age of ████████ years), disabled, or disabled veterans.
3. On November 2, 2020, Petitioner reported to MDHHS that he began employment with Motus Integrated Tech (hereinafter, “Employer”).
4. On November 6, 2020, Petitioner began receiving weekly income from Employer.

5. From January through February 2021, MDHHS issued a total of \$1,462 in FAP benefits to Petitioner based on \$0 employment income.
6. In January 2021, Petitioner received \$[REDACTED] in wages across five pay dates.
7. In February 2021, Petitioner received \$[REDACTED] in wages across four pay dates.
8. On January 20, 2022, MDHHS calculated that Petitioner received \$1,462 in FAP benefits from January through February 2021 due to MDHHS's failure to timely budget Petitioner's income from Employer.
9. On January 20, 2022, MDHHS mailed a Notice of Overissuance stating that Petitioner received \$1,462 in over-issued FAP benefits from January through February 2021 due to agency error.
10. On February 1, 2022, Petitioner requested a hearing to dispute the claim for FAP benefits.

CONCLUSIONS OF LAW

The 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. FAP 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 for allegedly over-issued FAP benefits. Exhibit A, pp. 5-6. A Notice of Overissuance dated January 20, 2022, stated that Petitioner received \$1,462 in over-issued FAP benefits from January through February 2021 due to agency error. Exhibit A, pp. 8-13.

An OI is the benefits issued to a client group in excess of what it was eligible to receive. BAM 700 (October 2018) pp. 1-2. When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the OI. *Id.* Recoupment is an MDHHS action to identify and recover a benefit OI. *Id.* A claim is the resulting debt created from an OI of benefits. *Id.*

Federal regulations refer to OIs of FAP benefits 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 client error, and IPV. 7 CFR 273.18(b). MDHHS may pursue FAP-related agency errors when they exceed \$250. BAM 705 (October 2018), p. 1. Thus, MDHHS may establish a claim against Petitioner if the established OI exceeds \$250.

Clients requesting hearings disputing OIs caused by agency error typically contend that they should not be required to repay an OI caused by MDHHS's error. Such an argument is based in equity; in other words, it is unjust to have a client repay benefits over-issued only because of MDHHS's fault. Federal regulations and MDHHS policy each authorize recoupment of FAP benefits even when caused by MDHHS's error. Thus, MDHHS is not barred from establishing a claim against Petitioner simply because it caused the OI.

For agency errors, the OI period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the OI was referred to the recoupment specialist, whichever period is later. *Id.*, p. 5. In the present case, MDHHS seeks a claim for an OI period beginning January 2021. Petitioner's case was referred to a recoupment specialist that same month. Exhibit A, p. 47. Going back 12 months from the referral date precludes an OI due to agency error earlier than January 2020. Thus, MDHHS is not precluded from pursuing a claim for an OI period beginning January 2021.

MDHHS testified that an OI was caused by its failure to timely budget wages for Petitioner. Petitioner timely reported to MDHHS on a Change Report dated November 2, 2020, that he began employment. The WorkNumber records from Employer listed wages paid to Petitioner beginning November 6, 2020. Exhibit A, pp. 30-34. MDHHS must take action and issue notice to the client within 10 days of a change resulting in a FAP benefit decrease.² BAM 220 (January 2021) pp. 7-8. MDHHS should have processed Petitioner's reported change by November 16, 2020. Instead, MDHHS delayed processing the change until January 20, 2021.

MDHHS delayed beginning an OI period until January 2021 despite Petitioner's earlier income from 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 MDHHS to process changes (10 days; see BAM 220), and the full negative action suspense period (at least 11 days; see *Id.*).³ BAM 705 (October 2017) p. 5.

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 Changes reported by tape match have a 15-day timeline for processing (see *Id.*).

³ MDHHS may have been authorized to pursue an OI period beginning December 2020 based on Petitioner's change reporting date of November 4, 2020. The issue is moot as an OI for December 2020 was not alleged.

MDHHS presented FAP-OI budgets from January through February 2021 demonstrating how an OI was calculated. Exhibit A, pp. 16-20. For each month, MDHHS concluded that Petitioner was ineligible for FAP benefits due to excess net income. To determine if the FAP-OI budgets were accurate, an analysis of only the FAP-OI budget from January 2021 is necessary because a smaller amount of income was factored that month.⁴

BEM 556 outlines the factors and calculations required to determine a client's net income for FAP benefits. Net income factors group size, countable monthly income, and relevant monthly expenses.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of four.⁵ Petitioner did not dispute the group size.

MDHHS calculated a gross employment income of \$[REDACTED] for Petitioner. For OIs caused by agency error, MDHHS is to use actual gross income if improper budgeting of income caused the OI. BAM 705 (October 2018) p. 1. The income is then converted to a monthly amount. *Id.* MDHHS converts weekly income to a monthly amount by multiplying the average income by 4.3. BEM 505 (January 2021) p. 8. TheWorkNumber documents for Petitioner listed wages from Employer totaling \$3,708.64 across five weekly pay dates. Exhibit A, pp. 30-33. Multiplying Petitioner's average weekly wage (\$[REDACTED]) by 4.3 results in a gross monthly income of \$[REDACTED] (dropping cents). MDHHS gives a 20% credit for timely reported wages resulting in countable wages of \$[REDACTED] (dropping cents).

It was not disputed that Petitioner's household received \$[REDACTED] in monthly child support. For FAP, court-ordered child support income is countable. BEM 503 (January 2021) pp. 9-10. Adding the \$[REDACTED] in child support to countable wages of \$[REDACTED] results in a total income of \$[REDACTED].⁶

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a [REDACTED] (over [REDACTED] years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: childcare, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS additionally considers an uncapped excess shelter expense and the medical expenses above \$35 for each SDV group member(s). There was no evidence of SDV members in Petitioner's benefit group.

⁴ The FAP-OI budget for January 2021 factored gross employment income of \$[REDACTED]. The February 2021 FAP-OI budget factored gross employment income of \$[REDACTED]. All other budget variables were unchanged.

⁵ See BEM 212 for policies on determining group size for FAP benefits.

⁶ MDHHS testified that Petitioner had additional rental income which was not counted. Exhibit A, p. 35. The issue is moot as the FAP-OI budgets did not factor income other than Petitioner's income from Employer and \$[REDACTED] for child support.

There was no evidence that Petitioner reported having child support or dependent care expenses. Medical expenses are not applicable because no SDV members were reported. Thus, Petitioner's non-shelter expenses are \$0.

Petitioner's FAP benefit group size justifies a standard deduction of \$181 (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction and countable non-shelter expenses are subtracted from the countable monthly income to calculate the group's adjusted gross income. Subtracting the standard deduction (\$181) and countable non-shelter expenses (\$0) from Petitioner's group's income results in an adjusted gross income of \$[REDACTED].

MDHHS credited Petitioner with monthly housing expenses of \$585. Petitioner's original FAP eligibility was based on housing expenses of \$959.⁷ The evidence did not establish why MDHHS reduced Petitioner's housing expenses to \$585.⁸ For purposes of this decision, it will be found that Petitioner's monthly housing expenses were \$959. MDHHS credited Petitioner with a standard heating/utility (h/u) credit of \$[REDACTED]. RFT 255 (October 2020) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.⁹ Adding Petitioner's housing and utility credits results in a total shelter obligation of \$1,496.

MDHHS only 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. Petitioner's excess shelter amount is \$211.

The FAP benefit group's net income is determined by subtracting the excess shelter expense from the group's adjusted gross income; doing so results in \$[REDACTED] in net income for Petitioner's group. As of January 2021, the net income limit for a group size of four persons was \$2,184. RFT 250 (October 2020) p. 1. Thus, Petitioner's net income exceeded the net income limit.

Due to income exceeding the net income limit, all potentially recoupable FAP benefits issued to Petitioner in January through February 2021 were over-issued.¹⁰ FAP documentation listed \$1,462 in potentially recoupable FAP benefits from the alleged OI period.¹¹ Exhibit A, p. 15.

⁷ A Notice of Case Action dated October 12, 2020, included a budget summary listing all expenses in Petitioner's FAP eligibility beginning September 2020. Exhibit A, pp. 21-25. Presumably the same expenses were factored in Petitioner's FAP eligibility for January and February 2021.

⁸ MDHHS acknowledged some error but contended that Petitioner's monthly expenses were only \$607.67 based on a mortgage statement. Exhibit A, p. 37.

⁹ MDHHS allows additional credits for "actual utility expenses". Such expenses are only allowed for utility installation charges, water well installation and maintenance, and septic installation and maintenance. BEM 554 (October 2019) p. 15. There was no evidence of applicable exceptions.

¹⁰ Federal law prohibits the recoupment of monthly 15% supplements issued to clients during the COVID-19 pandemic. Consolidated Appropriations Act, Pub. Act 116-20, 2021, Sec 702(b)(4).

¹¹ Excluded from the \$1,462 total were \$51 issuances from January and February 2021.

The evidence established that Petitioner received an OI of \$1,462 in FAP benefits from January through February 2021 due to agency-error. Though MDHHS was fully responsible for causing the OI, the \$1,462 claim sought by MDHHS must be affirmed.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a claim of \$1,462 for FAP benefits over-issued to Petitioner from January through February 2021 due to agency error. The MDHHS actions to establish against Petitioner a recipient claim are **AFFIRMED**.

CG/mp



Christian Gardocki
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

Email Recipients:

MDHHS-RECOUPMENT-HEARINGS
MDHHS-Jackson-Hearings
D. Sweeney
M. Holden
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First-Class Mail Recipient:

[REDACTED] [REDACTED]
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