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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 29, 2022
MOAHR Docket No.: 22-001445
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 telephone hearing was held on April 25, 2022. The Petitioner appeared and represented himself. The Department of Health and Human Services (MDHHS) was represented by Tracy Upshaw, Recoupment Specialist.

ISSUE

Did MDHHS properly determine that Petitioner had been overissued Food Assistance Program (FAP) benefits due to agency error (AE)?

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 applied for FAP benefits, reporting that:
 - a. Petitioner's group consisted of himself and his wife, ██████████ ██████████ (Wife).
 - b. Petitioner reported that both Wife and he entered the United States on September 18, 2018 and both have a I-551 Permanent Resident Card or "Green Card".

(Exhibit A, pp. 20-25).

2. Petitioner submitted to MDHHS a copy of Wife's and he's Permanent Resident card, showing that they have been United States residents since September 19, 2018 (Exhibit A, p. 17).
3. From May 1, 2020 to April 30, 2021, Petitioner was issued \$ [REDACTED] in FAP benefits for a group size of two, including pandemic supplements (Exhibit A, pp. 13-16).
4. On March 14, 2022, MDHHS issued a Notice of Overissuance to Petitioner informing him that he was overissued FAP benefits from May 1, 2020 to April 30, 2021 in the amount of \$ [REDACTED]. The overissuance (OI) was deemed due to agency error (AE) because MDHHS incorrectly approved Petitioner's FAP group when they did not have an eligible citizenship status to receive FAP benefits (Exhibit A, pp. 6-11).
5. On March 28, 2022, Petitioner timely requested a hearing to dispute that he was overissued FAP benefits (Exhibit A, pp. 3-4).

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. The Department (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.

In this case, Petitioner disputes that he was overissued FAP benefits.

Petitioner applied for FAP benefits for Wife and Himself on [REDACTED] 2020. Petitioner reported on his application that they entered the United States on September 18, 2018. Petitioner reported that both Wife and he have an I-551 Permanent Resident card. In order to be eligible to receive FAP benefits, a person must be a U.S. citizen or have an acceptable alien status. BEM 225 (October 2019), p. 1. Individuals who do not meet this requirement are disqualified from FAP eligibility. BEM 225, p. 1, BEM 212 (July 2019), p. 8. Any of the following persons are considered to have an acceptable alien status:

- United States citizens (includes those born in Puerto Rico)
- born in Canada and at least 50% American Indian
- member of American Indian tribe
- qualified military alien, spouse or child of qualified military alien,
- refugee under Section 207
- asylee under Section 208

- Cuban/Haitian entrant
- Amerasian
- victim of trafficking
- **permanent resident alien (I-551) with class code of RE, AM, AS, SI or SQ**
- permanent resident alien and has I-151
- deportation withheld (under certain conditions)
- granted conditional entry under 203(a)(7)
- paroled under 212(d)(5) for at least one year (under certain conditions)
- battered aliens, if more than five years in the United States
- **permanent resident alien with a class code other than RE, AM or AS, if in the United States for longer than 5 years.**

BEM 225, pp. 33-35. (Emphasis added)

Persons with a class code other than RE, AM or AS who entered the United States after August 22, 1996, may be eligible for FAP benefits for their first five years in the United States if any of the following circumstance are applicable:

- has 40 countable Social Security credits
- age 65 or older as of August 22, 1996, and was residing in United States on August 22, 1996
- Hmong or Laotian (with other requirements)
- A lawful U.S. resident and currently blind or disabled
- under 18 years of age.

BEM 225, pp. 10-11, 33-35.

It is undisputed that Petitioner and Wife are not United States citizens. It is also undisputed that Petitioner and Wife have lawfully been in the U.S. since 2018. Petitioner and Wife have not had permanent residency status for five or more years. Petitioner's and Wife's Permanent Resident card does not show a class code of RE, AS, SI, AM, or SQ (see Exhibit A, p. 17). There was no evidence presented that Petitioner has an I-151 or meets a class code exception. Petitioner and Wife are over 18 years old and not blind or disabled. Since Petitioner does not meet any of the acceptable alien status criteria for FAP eligibility, MDHHS should not have issued his household FAP benefits. 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), pp. 1-2. An agency error OI is caused by incorrect actions by MDHHS, including delayed or no action, which result in the client receiving more benefits than they were entitled to receive. Therefore, MDHHS properly concluded that Petitioner was overissued FAP benefits due to agency error.

The amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, pp. 4-6; BAM 705 (October 2018), pp. 1-6. The overissuance 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 12 month period is later. BAM 705, p. 5. Since Petitioner's FAP group were never eligible to receive FAP benefits, all benefits

issued to his household were overissued. MDHHS properly excluded from the OI amount the non-recoupable 15% increase pandemic supplement that was issued (see Exhibit A, pp. 13-16). Therefore, MDHHS properly determined the OI to be FAP benefits Petitioner was issued, minus non-recoupable pandemic supplements, totaling \$ [REDACTED].

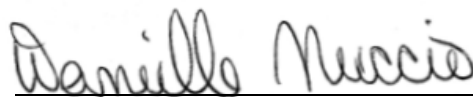
Petitioner indicated that he did not have any resources to repay MDHHS and sought a waiver of the OI. BAM 725, p. 16 provides that MDHHS can compromise (reduce or eliminate) an overissuance if it is determined that a household's economic circumstances are such that the overissuance cannot be paid within three years. A request for a policy exception must be made from the recoupment specialist to the Overpayment, Research and Verification Section office outlining the facts of the situation and the client's financial hardship, and the manager of the MDHHS Overpayment, Research and Verification Section has final authorization on the determination for all compromised claims. Therefore, the discretion to grant a waiver is within MDHHS's discretion and not a hearable issue.

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 MDHHS acted in accordance with Department policy when determined that Petitioner was overissued benefits that MDHHS is entitled to recoup.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

DN/mp



Danielle Nuccio

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-Macomb-20-Hearings
MDHHS-Recoupment-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

First-Class Mail Recipient:

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