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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: October 25, 2022
MOAHR Docket No.: 22-004020
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 October 20, 2022. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Latrisha Tartt, 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 July 8, 2015, Petitioner reported to MDHHS having monthly medical expenses of \$349.
2. On June 8, 2016, Petitioner reported no changes to medical expenses.
3. As of September 2016, Petitioner received monthly Retirement, Survivors and Disability Insurance (RSDI) and was responsible for a Part B Medicare premium.
4. From September 2016 through July 2017, MDHHS issued a total of \$2,134 in FAP benefits to Petitioner based on monthly medical expenses of \$700-\$950.
5. On July 10, 2017, Petitioner's case was referred to recoupment.

6. On August 24, 2022, MDHHS calculated that Petitioner received \$1,958 in over-issued FAP benefits from September 2016 through July 2017 based on monthly medical expenses of \$0.
7. On August 24, 2022, MDHHS mailed a Notice of Overissuance stating that Petitioner received \$1,958 in over-issued FAP benefits from September 2016 through July 2017 due to agency error.
8. On September 2, 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. 47-48. A Notice of Overissuance dated August 24, 2022, stated that Petitioner received \$1,958 in over-issued FAP benefits from September 2016 through July 2017 due to agency error. Exhibit A, pp. 4-6.

An overissuance (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.

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.

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 September 2016. Petitioner's case was referred to a recoupment specialist on July 10, 2017. Exhibit A, p. 46. Going back 12 months from the recoupment specialist referral date allows MDHHS to pursue an OI beginning September 2016.²

FAP-OI budgets from September 2016 through July 2017 demonstrated how an OI was calculated. Exhibit A, pp. 9-31. MDHHS factored actual issuances totaling \$2,134 from documentation of Petitioner's FAP issuance history. Exhibit A, pp. 32-33. MDHHS testified that correct issuances were calculated from the same income and expenses in original FAP budgets other than eliminating Petitioner's medical expenses. MDHHS documented that Petitioner was originally credited with monthly medical expenses between \$700-\$950. Exhibit A, p. 7. Using the procedures set forth in BEM 556 for calculating FAP eligibility, an OI of \$1,958 was calculated.

MDHHS contended that Petitioner was properly not credited with medical expenses because medical expenses were not verified. MDHHS is to verify medical expenses at redetermination. BEM 554 (June 2016) p. 11. MDHHS credibly testified that a check of correspondence from Petitioner indicated no submissions verifying medical expenses. Though the evidence suggested that Petitioner failed to verify medical expenses, the evidence suggested that Petitioner reported medical expenses and MDHHS failed to request verification.

Petitioner submitted a Redetermination to MDHHS on July 8, 2015, which reported \$349 in ongoing monthly medical expenses. Petitioner reported no changes to medical expenses on a Semi-Annual Contact Report submitted to MDHHS on June 8, 2016. Exhibit A, pp. 43-44. Thus, Petitioner reported having \$349 in monthly medical expenses at the time of the alleged OI. MDHHS is to send a VCL after the redetermination interview for any missing verifications allowing 10 days for their return. BAM 210 (July 2016) p. 16. MDHHS testimony acknowledged that a VCL was not sent to Petitioner requesting proof of medical expenses. MDHHS's failure to request

² Federal regulations limit states from pursuing OIs caused by agency error further back than 12 months from the time the agency was aware of the OI. MDHHS policy presumes awareness of an OI when a referral is made to a recoupment specialist. Arguably, MDHHS is not aware of a claim until notice of the overissuance is sent to a client. If the Notice of Overissuance date was applied as the date MDHHS was aware of the claim, then MDHHS would be barred from seeking a claim from 2016 and 2017.

verification of medical expenses excuses Petitioner's failure to submit proof of medical expenses.

In further support that MDHHS improperly credited Petitioner with \$0 medical expenses, MDHHS testimony acknowledged that Petitioner was responsible for a Medicare premium. During the hearing, a check of Petitioner's RSDI documentation revealed responsibility for a monthly Medicare Part B premium. In 2016, Medicare Part B premium costs were \$134.³ Petitioner testified she had additional Part C and Part D Medicare premiums.

Given the evidence, MDHHS failed to properly calculate an OI against Petitioner. Thus, MDHHS's attempt to establish a claim of \$1,958 against Petitioner must be reversed.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a claim of \$1,958 for FAP benefits over-issued to Petitioner from September 2016 through July 2017 due to agency error. MDHHS's attempt to establish against Petitioner a recipient claim is **REVERSED**.

CG/mp



Christian Gardocki
Administrative Law Judge

³ https://secure.ssa.gov/apps10/poms/images/poms06/06008/G-HI_00805.126C-1.pdf

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-Electronic Mail :

DHHS
MDHHS-Genesee-UnionSt-Hearings
MDHHS-Recoupment-Hearings
D. Sweeney
M. Holden
MOAHR
BSC2

Via-First Class Mail :

Petitioner
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] MI [REDACTED]