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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 8, 2024
MOAHR Docket No.: 24-000906
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 on March 5, 2024, via teleconference. Petitioner appeared and represented herself. Anna Peterson, Overpayment Establishment Analyst, 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) in the amount of \$████████ based on 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. Petitioner was an ongoing recipient of FAP benefits.
2. On May 5, 2023, MDHHS conducted an eligibility interview with Petitioner (Exhibit A, p. 66). Petitioner reported a \$914.00 mortgage expense (Exhibit A, p. 72).
3. On May 16, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits for a household of four (Exhibit A, p. 55). MDHHS budgeted \$914.00 for Petitioner's housing costs (Exhibit A, p. 56).
4. On December 18, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits for a household of four (Exhibit A, p. 42). MDHHS budgeted \$914.00 for Petitioner's housing costs (Exhibit A, p. 43).

5. On December 26, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that her FAP benefit rate decreased because her shelter deduction amount changed (Exhibit A, p. 38). MDHHS budgeted \$711.00 for Petitioner's housing costs (Exhibit A, p. 38).
6. On January 11, 2024, MDHHS sent Petitioner a Notice of Overissuance indicating that she was overissued FAP benefits in the amount of \$[REDACTED] from June 1, 2023 to January 31, 2024 due to client error (Exhibit A, p. 10). Specifically, the notice indicated that Petitioner over-reported her mortgage expense (Exhibit A, p. 10).
7. On January 22, 2024, Petitioner filed a hearing request disputing the FAP OI (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 received an OI of FAP benefits due to client error. Specifically, MDHHS alleged that Petitioner over-reported her mortgage expense. Petitioner disputed this allegation. 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 720 (October 2017), p. 8; BAM 715 (October 2017), p. 6; BAM 705 (October 2018), 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.

MDHHS presented evidence that Petitioner paid \$711.00 for her mortgage payment and argued that Petitioner's housing expenses should have been budgeted at \$711.00 per month, rather than the \$914.00 per month that Petitioner reported (Exhibit A, p. 63). At the hearing, Petitioner credibly testified that the \$914.00 amount included the monthly mortgage payment and monthly association dues. Petitioner also testified that she explained that the monthly payment included the mortgage payment and monthly association dues to her caseworker.

When determining a household's FAP benefit rate, MDHHS is required to consider monthly shelter expenses. BEM 554 (January 2024), pp. 13-14. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. *Id.*, p. 14. If a client's reported shelter expense is considered questionable, MDHHS is required to verify the expense at application and when a change is reported. *Id.*, pp. 15-16. Importantly, before determining eligibility, MDHHS is required to give clients a reasonable opportunity to resolve any discrepancies between their statements and information from another source. BAM 130 (October 2023), p. 9.

Here, MDHHS determined that Petitioner was over-reporting her housing expenses after it conducted an investigation and reviewed Petitioner's mortgage statement showing a \$711.00 monthly payment. However, Petitioner reported that her monthly shelter expenses included mandatory association dues. MDHHS did not argue that association dues were not a valid housing expense. Pursuant to policy, MDHHS should have allowed Petitioner a reasonable opportunity to resolve the discrepancy. BAM 130, p. 9. No evidence was presented that MDHHS gave Petitioner this opportunity or otherwise requested additional verification of the questionable housing expenses. Failure to verify this information constitutes an agency error. Therefore, MDHHS has not established that Petitioner received an OI of FAP benefits based on client error.

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 did not act in accordance with Department policy when it determined that Petitioner received an OI of FAP benefits based on client error.

DECISION AND ORDER

Accordingly, MDHHS's decision is **REVERSED** because MDHHS failed to establish that Petitioner received a FAP OI of \$[REDACTED] due to client error. **IT IS ORDERED** that MDHHS delete the FAP OI in its entirety and cease any recoupment/collection action.

LJ/tm



Linda Jordan
Administrative Law Judge

