



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: April 1, 2024
MOAHR Docket No.: 24-001815
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 27, 2023. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Anna Peterson, overpayment analyst.

ISSUE

The issue is whether MDHHS established against Petitioner a recipient claim for Food Assistance Program (FAP) benefits allegedly over-issued 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. As of September 2023, Petitioner was an ongoing FAP benefit recipient as a member of a benefit group that included her daughter, Mona Sufyan (hereinafter, "Daughter").
2. As of September 2023, Daughter was aged 18-49 years and a full-time college student who did not meet any exceptions to student status.
3. On October 30, 2023, Petitioner reported to MDHHS that Daughter exited the household.

4. From October 2023 through February 2024, Petitioner received \$2,185 in FAP benefits based on a benefit group of five persons which included Daughter.
5. On February 8, 2024, Petitioner's case was referred to the recoupment unit.
6. On February 9, 2024, MDHHS calculated that Petitioner received an OI of \$1,070 in FAP benefits from October 2023 through February 2024 due to Daughter's wrongful inclusion in the group.
7. On February 9, 2024, MDHHS sent Petitioner a Notice of Overissuance stating that Petitioner received \$1,070 in over-issued FAP benefits from October 2023 through February 2024 due to agency error.
8. On February 22, 2024, Petitioner requested a hearing to dispute the alleged OI.

CONCLUSIONS OF LAW

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 (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. MDHHS 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. 6-8. A Notice of Overissuance dated February 9, 2024, alleged that Petitioner received \$1,070 in over-issued FAP benefits from October 2023 through February 2024 due to agency-error. Exhibit A, pp. 10-11.

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 7 CFR 273.18(c)(1).

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.

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. In the present case, MDHHS may establish a claim against Petitioner if the established OI exceeds \$250.

Petitioner contended that she should not be required to repay an OI caused by MDHHS's error. Petitioner's contention is based on principles of equity: that it is unjust to repay benefits issued only because of MDHHS's mistake. Petitioner's contention is understandable though not supported by federal regulations and MDHHS policy which 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. BAM 705 (October 2018), p. 5. In the present case, MDHHS seeks a claim for an OI period beginning October 2023. Petitioner's case was referred to the recoupment unit on February 8, 2024. Exhibit A, p. 67. Going back 12 months from the referral date allows MDHHS to pursue a claim for agency error beginning October 2023.

Specifically, MDHHS alleged that it failed to remove Daughter from Petitioner's FAP benefit group causing an OI from October through December 2023 due to Daughter's student status. A person in student status must meet certain criteria to be eligible for FAP benefits. A person is in student status if he/she is:

- Age 18 through 49; and
- Enrolled half-time or more in either a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245 (April 2021) pp. 3-4.

It was not disputed that Daughter was 18-49 years old. Petitioner's testimony acknowledged that Daughter was a full-time college student from October through at least December 2023. The evidence established that Daughter was in student status from October 2023 through December 2023.

For a person in student status to be eligible for FAP benefits, he or she must meet one of the following criteria:

- Receiving FIP benefits
- Enrolled in an institution of higher education as a result of participation in:
 - A JTPA program.
 - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
 - Enrolled in a FAE&T or FAE&T plus (under certain circumstances)

- An employment and training program for low-income households operated by state and local government (under certain circumstances)
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year (i.e. work study).
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does not live with his or her natural, adoptive or stepparent.

BEM 245 (April 2021) pp. 3-5.

There was no evidence that any of the above circumstances applied to Daughter.² Thus, Daughter was in student status and met no exceptions to qualify for FAP benefits.

MDHHS credibly testified that Petitioner was scheduled for a redetermination of FAP benefits beginning October 2023.³ Though MDHHS interviewed Petitioner, it did not inquire as to whether Daughter was a college student. Exhibit A, pp. 60-61. Had MDHHS determined that Daughter was in student status, Petitioner's FAP eligibility for October 2023 would have been affected.

MDHHS also sought a claim from December 2023 through February 2024 based on Daughter's exit from the household. A Change Report submitted to MDHHS on October 30, 2023 reported that Daughter exited the household. Exhibit A, pp. 45-46. For changes not reported on a tape match which result in FAP benefit decreases, MDHHS is take action within 10 days of becoming aware of the change. BAM 220 (November 2023) p. 8. For

² Emails between Petitioner and MDHHS suggested that MDHHS considered whether Daughter was enrolled in a program that would meet an exception. Petitioner acknowledged that Daughter was not enrolled in such a program. Exhibit A, pp. 65-67.

³ MDHHS's testimony is consistent with redetermination documentation submitted by Petitioner in August 2023: two months before the redetermined benefit period. Exhibit A, pp. 28-30.

non-income changes, MDHHS is to complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs 10 days after the change is reported. *Id.*, p. 10. Based on Petitioner's reporting date of October 30, 2023, MDHHS should have affected Petitioner's FAP eligibility beginning December 2023.

MDHHS presented FAP-OI budgets from October 2023 through February 2024 demonstrating how an OI was calculated. Exhibit A, pp. 17-27. Actual FAP issuances totaling \$1,070 were taken from documentation of Respondent's FAP issuance history. Exhibit A, p. 16. Presumably, correct FAP benefits were calculated from the same group size, income, and expenses from original budgets other than excluding Daughter as a group member. No errors to the budgets were alleged. Using the procedures set forth in BEM 556 for calculating FAP eligibility, an OI of \$1,070 was calculated.

Petitioner testified she reported timely and honestly. Petitioner also testified that having to repay \$1,070 would be a hardship. Petitioner additionally testified that she was unaware that Daughter would be ineligible for attending school and that she was told by MDHHS staff that she would not have to repay any OI. Petitioner's testimony was wholly sincere and consistent with the evidence; however, it was also irrelevant to determining whether an OI can be established as well as the amount of the OI.

The evidence established that Petitioner received an OI of \$1,070 in FAP benefits from October 2023 through February 2024 due to agency-error. Thus, MDHHS established a recipient claim of \$1,070 against Petitioner for agency error.

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 \$1,070 for FAP benefits over-issued to Petitioner from October 2023 through February 2024 due to agency error. The MDHHS action to establish against Petitioner a recipient claim is **AFFIRMED**.

CG/nr



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

Via-Electronic Mail :

DHHS
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hearings@michigan.gov**

Interested Parties
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MDHHS Recoupment
N. Stebbins
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