



GRETCHEN WHITMER
GOVERNOR

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

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DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: May 30, 2024
MOAHR Docket No.: 24-001816
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 May 23, 2024. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Dawn McKay, 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 May 2022, Petitioner was an ongoing FAP benefit recipient.
2. From May 13, 2022, through at least January 2023, Petitioner received wages from MJP Management (hereinafter, "Employer").
3. In or near November 2022, MDHHS discovered from its internal reports that Petitioner received ongoing wages from Employer.
4. From December 2022 through January 2023, Petitioner received \$752 in FAP benefits based on \$0 wages from Employer.

5. On January 24, 2023, MDHHS sent Petitioner a Notice of Overissuance seeking repayment of \$2,477 in over-issued FAP benefits from July 2022 through January 2023 due to client error.
6. On January 3, 2024, Petitioner signed an Intentional Program Violation Repay Agreement consenting to repayment of \$1,725 in FAP benefits over-issued from July through November 2022.
7. On January 3, 2024, Petitioner signed documentation agreeing to a one-year FAP-related intentional program violation (IPV) disqualification.
8. On January 18, 2024, MDHHS calculated that Petitioner received an overissuance (OI) of \$752 in FAP benefits from December 2022 through January 2023 due to MDHHS's failure to budget Petitioner's wages from Employer.
9. On January 18, 2024, MDHHS sent Petitioner a Notice of Overissuance seeking repayment of \$752 in FAP benefits over-issued from December 2022 through January 2023 due to agency error.
10. On February 20, 2024, Petitioner requested a hearing to dispute repayment of \$752 in FAP benefits from December 2022 through January 2023.

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. 2-5. Petitioner agreed in writing to repayment of \$1,725 benefits over-issued from July through November 2022 on January 3, 2024. Exhibit A, pp. 9-11. Petitioner also agreed that the OI was caused by an IPV and that MDHHS could impose a one-year FAP-related disqualification. Exhibit A, p. 12. Petitioner only disputed an OI from December 2022 through January 2023. A Notice of Overissuance dated January 18, 2024, alleged that Petitioner received \$752 in over-issued FAP benefits from December 2022 through January 2023 due to agency-error. Exhibit A, pp. 32-37.

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).

Recipient claims may be caused by agency error, unintentional client error, or 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.

Petitioners that request 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 because of MDHHS’s fault. Federal regulations and MDHHS policy each authorize recoupment of FAP benefits even when an OI is caused by MDHHS’s error. Furthermore, there is no known authority from the legislature for a potential administrative remedy based on equity. In the absence of an express legislative conferral of authority, an administrative agency generally lacks the powers of a court of equity. *Delke v Scheuren*, 185 Mich App 326, 332; 460 NW2d 324 (1990). MDHHS is not barred from establishing a claim against Petitioner simply because it caused the OI.

Petitioner’s primary contention was that MDHHS should be barred from pursuing an OI connected to a period for which a claim was already established. Petitioner’s contention was not compelling because he acknowledged agreeing to repay \$2,477 in FAP benefits over-issued from July 2022 through January 2023. The only difference after Petitioner’s agreement was that MDHHS accepted that \$752 in FAP benefits over-issued in December 2022 and January 2023 were caused by agency error instead of IPV.² The change resulted in no difference in the amount for Petitioner to repay but did shorten the OI period caused by Petitioner’s IPV.³

Petitioner also stated he sought an administrative remedy to prevent MDHHS from pursuing an OI or an IPV in the future for the same OI period. First, administrative remedies may not direct future MDHHS actions. Secondly, generally, MDHHS cannot

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 MDHHS accepted that it caused the OI because it first learned of Petitioner’s unreported wages in November 2022. Thus, MDHHS could have issued the proper FAP benefit amounts after November 2022 despite Petitioner’s previous failure to report wages.

³ The change has no known impact on Petitioner other than changing the percentage of FAP benefits that can be recouped by MDHHS from Petitioner’s ongoing benefit eligibility. For IPV, MDHHS can recoup 10% of an ongoing issuance; for agency errors, MDHHS can recoup only 5%. BAM 725 (January 2021) p. 7.

pursue OIs or IPVs once already established after the matter is decided by administrative hearing. MDHHS is so prevented due to res judicata and or collateral estoppel which prevent the relitigating of matters already decided by litigation.⁴

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. The evidence did not establish specifically when Petitioner's case was referred to the recoupment unit; however, undisputed MDHHS testimony indicated that a Notice of Overissuance alleging an OI from July 2022 through January 2023 was mailed to Petitioner on January 24, 2023. Generally, a Notice of Overissuance would not be sent before a case was referred to the recoupment unit. Thus, it can be inferred that Petitioner's case was referred to the recoupment unit no later than January 24, 2023. Going back 12 months from the referral date allows MDHHS to pursue a claim for agency error beginning January 2022 and later. Thus, MDHHS is not barred from pursuing an OI against Petitioner beginning December 2022.

MDHHS contended that an OI was partially caused by its failure to timely budget wages for Petitioner. TheWorkNumber documents verified that Petitioner received wages from Employer from May 13, 2022, through at least January 2023. Exhibit A, pp. 21-22. An OI through November 2022 was indisputably caused by Petitioner's IPV. However, MDHHS acknowledged it should have budgeted wages from Employer beginning December 2022.

A claim based on untimely budgeted income requires that unbudgeted income caused an OI. MDHHS presented FAP-OI budgets from December 2022 through January 2023 demonstrating how an OI was calculated. Exhibit A, pp. 27-31. Actual FAP issuances totaling \$752 were taken from documentation of Petitioner's FAP issuance history. Exhibit A, p. 26. An overpayment analyst credibly testified that the same group size, income, and expenses from original budgets were used other than including Petitioner's wages from Employer. Exhibit A, pp. 21-22. No errors to the budgets were alleged. Using the budget procedures set forth in BEM 556 for calculating FAP eligibility, an OI of \$752 was calculated.


The evidence established that Petitioner received an OI of \$752 in FAP benefits from December 2022 through January 2023 due to agency-error. Thus, MDHHS established a recipient claim of \$752 against Petitioner for agency error.

⁴ Res judicata bars claims from being relitigated. Collateral estoppel prevents issues from being relitigated. Neither res judicate nor collateral estoppel prevent MDHHS from pursuing an OI or IPV in the future if pursuit is based on a different cause of an OI or IPV or if for a different OI period.

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 \$752 for FAP benefits over-issued to Petitioner from December 2022 through January 2023 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

Trista Waishkey
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Interested Parties

Washtenaw County DHHS
MDHHS Recoupment
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