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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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████████████████████, MI ██████████

Date Mailed: August 9, 2022
MOAHR Docket No.: 22-002543
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 August 1, 2022 via teleconference. Petitioner appeared and represented himself. April Ketner, Assistance Payments Worker, represented the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly determine that Petitioner was issued a Food Assistance Program (FAP) overissuance (OI) in the amount of ██████████ 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 ██████████ 2021, Petitioner applied for FAP benefits on behalf of himself and two minor children (Exhibit 1, pp. 24-26). Petitioner reported that he and his children had an eligible immigration status (Exhibit 1, p. 25). The immigration document type listed was an I-766 (Employment Authorization Card) (Exhibit 1, p. 25). Respondent reported that he and his children arrived in the United States on April 5, 2013 (Exhibit 1, p. 25).
2. On May 25, 2022, MDHHS sent Petitioner a Notice of Overissuance stating that he was overissued FAP benefits from October 1, 2021 to May 31, 2022 (alleged OI period) in the amount of ██████████ (Exhibit 1, p. 6). The notice stated that the OI was caused by agency error and that client was not eligible for FAP due to his immigration status (Exhibit 1, p. 6).

3. On [REDACTED], 2022, Petitioner filed a Request for Hearing disputing MDHHS determination that he was overissued FAP benefits (Exhibit 1, p. 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 was not eligible for FAP because of his immigration status and that MDHHS made an error when it initially approved his household for FAP benefits, which resulted in a FAP OI of \$[REDACTED]. Petitioner disputed that an OI occurred and asserted that he provided all the information MDHHS requested and followed program guidelines.

To qualify for FAP benefits, a person must be a U.S. citizen or have an acceptable non-citizen status. BEM 225 (October 2019), p. 1. An acceptable status includes persons who have lived in the U.S. as a “qualified alien” for at least five years since their date of entry (five-year ban). *Id.*, p. 38. A qualified alien is defined as an alien who is (i) lawfully admitted for permanent residence under the Immigration and Nationality Act (INA); (ii) granted asylum under Section 208 of the INA; (iii) a refugee who is admitted to the U.S. under Section 207 of the INA (this includes Iraqi and Afghan special immigrants); (iv) paroled into the U.S. under Section 212(d)(5) of the INA for a period of at least one year; (v) an alien whose deportation is being withheld under Section 241(b)(3) or 243(h) of the INA; (vi) granted conditional entry pursuant to Section 203(a)(7) of the INA; (vii) a Cuban/Haitian entrant; or (viii) An alien who has been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or legal permanent resident spouse or parent, or by a member of the spouse's or parent's family living in the same household, or is the parent or child of a battered person. BEM 225, pp. 3-4. 7 CFR 273.4(a)(5)(6).

Petitioner testified that he has been residing in the United States for over nine years and that his family arrived in the United States from Iraq on April 5, 2013 (Exhibit 1, p. 25). Petitioner stated that he and his children were seeking asylum. Petitioner presented USCIS Form I-797A, Notice of Action, which stated that his application for change of nonimmigrant status was approved, effective [REDACTED], 2013 (Exhibit 1, p. 33). Petitioner provided similar forms for his minor children (Exhibit 1, pp. 31, 35). In addition, Petitioner provided Employment Authorization Cards, issued by USCIS, for himself and his minor children (Exhibit 1, pp. 32, 34, 36). The Employment Authorization

Cards specified category C08, which denotes a pending asylum application. See U.S. Citizen and Immigration Services, Employment Authorization, <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/employer-information/employment-authorization> (last visited August 5, 2022).

The Compliance Division of MDHHS conducted a FAP Case Review of Petitioner's FAP case, using December 2021 as a sample month (Exhibit 1, p. 16). The review found that Petitioner was ineligible for FAP benefits during that month due to citizenship status (Exhibit 1, p. 16). The review referenced BEM 225 but did not explain why Petitioner's status was not acceptable. At the hearing, MDHHS did not provide any additional clarity beyond a conclusory statement that Petitioner did not have an eligible citizenship status. The record shows that Petitioner and his children have been residing in the United States for over five years, and thus, are not barred from receiving benefits by the five-year ban. However, no evidence was admitted to show that the family met the definition of "qualified alien" as defined by BEM 225 and by the federal regulations. Thus, MDHHS properly determined that Petitioner's household was not eligible for 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 (January 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, p. 8; BAM 715 (October 2017), p. 6; BAM 705 (January 2016), p. 6. An OI can be caused by client error, agency error, or an intentional program violation. 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.

Here, MDHHS committed an agency error when it processed Petitioner's FAP application and found that he and his children had eligible immigration statuses. MDHHS did not allege that Petitioner committed a client error. Because the agency error caused an OI greater than \$250.00, MDHHS is required to attempt to recoup the OI as a recipient claim.

MDHHS alleged that Petitioner was overissued \$[REDACTED] during the alleged OI period. During the alleged OI period Petitioner's FAP group received \$[REDACTED] (Exhibit 1, pp. 12-15). MDHHS stated that it deducted the 15% benefit increase from the OI amount pursuant to federal regulations. Because Petitioner's FAP group was completely ineligible for FAP benefits due to their immigration status, MDHHS is entitled to recoup \$4,916.00 from Petitioner as a recipient claim.

At the hearing, Petitioner expressed concerns about paying the OI amount. Individuals who do not have active benefits can pay OI balances by lump-sum or monthly cash payments. BAM 725 (January 2021), p. 9. Collection actions can also be suspended in certain circumstances. *Id.*, pp. 13-14. Additionally, MDHHS can compromise (reduce or

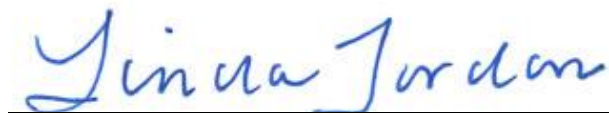
eliminate) an OI if it is determined that a household's economic circumstances are such that the OI cannot be paid within three years. *Id.*, p. 16. A request for a policy exception must be made from the Recoupment Specialist to the Overpayment, Research and Verification Section office outlining the facts of the situation and the client's financial hardship. *Id.* The manager of the MDHHS Overpayment, Research and Verification Section has final authorization on the determination for all compromised claims (Send to: Overpayment Recovery and State Psychiatric Hospital Reimbursement Division Overpayment Research and Verification Section Suite 1011 235 S. Grand Ave P.O. Box 30037 Lansing, MI 48909). *Id.*, pp. 16-17.

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 the MDHHS acted in accordance with Department policy when it determined that Petitioner received an OI of FAP benefits in the amount of \$ [REDACTED] due to agency error.

DECISION AND ORDER

Accordingly, the MDHHS' decision is **AFFIRMED**.

LJ/tm



Linda Jordan

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 :

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