



GRETCHEN WHITMER
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: November 1, 2022
MOAHR Docket No.: 22-003492
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 26, 2022. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Tracy Upshaw, recoupment specialist. Sam Tananah, Petitioner's cousin, participated as an Arabic-English translator.

ISSUES

The issue is whether MDHHS established against Petitioner a recipient claim for Food Assistance Program (FAP) benefits.

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.
2. On May 27, 2021, MDHHS explained to Petitioner the responsibility to report income.
3. As of June 2021, Petitioner was an ongoing recipient of FAP benefits with no other group members.
4. From July 9, 2021, through April 1, 2022, Petitioner received employment income from Macy's (Employer)

5. From September 2021 through March 2022, MDHHS issued a total of \$1,732 in FAP benefits to Petitioner based on \$0 employment income.
6. From September 2021 through March 2022, Petitioner received at least \$[REDACTED] in gross monthly employment income.
7. As of March 2022, Petitioner had not reported income from Employer to MDHHS.
8. On April 9, 2022, Petitioner's case was referred to a recoupment specialist.
9. On May 17, 2022, MDHHS calculated that Petitioner received \$1,732 in FAP benefits from September 2021 through March 2022 due to Petitioner's failure to timely report income from Employer.
10. On May 17, 2022, MDHHS mailed a Notice of Overissuance stating that Petitioner received \$1,732 in over-issued FAP benefits from September 2021 through March 2022 due to client error.
11. On May 31, 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 (RTM).

Petitioner requested a hearing to dispute MDHHS's attempt to establish a recipient claim for allegedly over-issued FAP benefits. Exhibit A, pp. 7-8. A Notice of Overissuance dated May 17, 2022, stated that Petitioner received \$1,732 in over-issued FAP benefits from September 2021 through March 2022 due to Petitioner's error. Exhibit A, pp. 10-15.

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 client errors when they exceed \$250. BAM 715 (October 2017) p. 7.

For client errors, the OI period begins the first month when benefit issuance exceeds the amount allowed by policy, or 72 months before the date the OI was referred to the recoupment specialist, whichever period is later. *Id.*, p. 5. Petitioner's case was referred to a recoupment specialist on April 6, 2022. Exhibit A, p. 57. Given the referral date, MDHHS is not barred from pursuing a claim against Petitioner for an OI period beginning September 2021.

MDHHS presented FAP-OI budgets from September 2021 through March 2022 demonstrating how an OI was calculated. Exhibit A, pp. 20-36. Actual issuances totaling \$1,732 were taken from documentation of Petitioner's past issuances. Exhibit A, pp. 17-19. MDHHS credibly testified that the only variable changed from original budgets was the inclusion of Petitioner's actual gross income from Employer. Theworknumber.com documents verified income to Petitioner from July 9, 2021, through April 1, 2022, and monthly gross income of at least \$[REDACTED]. Exhibit A, pp. 37-39. The gross income limit for September 2021 was \$2,128. RFT 250 (October 2020) p. 1. The gross income limit from October 2021 through March 2022 was \$2,148. RFT 250 (October 2021) p. 1. For all months during the alleged OI period, Petitioner's gross income exceeded the income limit. Clients are ineligible when gross income exceeds the gross income limit. BEM 250 (October 2020) p. 1. Thus, all \$1,732 in benefits issued to Petitioner were over-issued.

MDHHS delayed beginning an OI period until September 2021 despite Petitioner's earlier income from Employer. The delay is compliant with policy which requires beginning the OI period for client-errors in the first full benefit month after allowing time for a reported change (10 days; see BAM 105), time to process the change (10 days; see BAM 220), and the full negative action suspense period (at least 11 days; see *Id.*). BAM 715 (October 2017) p. 5.

By alleging a client error, MDHHS contended that Petitioner failed to report income from Employer. Federal regulations require change reporters to report income within 10 days after the income begins. 7 CFR 273.12(a)(2). Generally, change reporters are those without reported employment income during the benefit period.² MDHHS adopted the

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 Simplified reporters, as opposed to change reporters, need only report when household income exceeds the simplified reporting income limit. Simplified reporters have employment income budgeted during the benefit period.

federal regulations in its policy. BAM 105 (January 2015) p. 7. It was not disputed that Petitioner was a change reporter obligated to report the start of employment income.³

MDHHS credibly testified that a check of Petitioner's electronic case file revealed no submissions from Petitioner reporting income. MDHHS also testified that comments associated with Petitioner's case revealed none documenting a reporting of income.

Petitioner's testimony acknowledged not submitting documentation of income to MDHHS. Petitioner testified that she called MDHHS several times to report income, but never left messages because a voicemail was always full. Petitioner provided no corroboration of her efforts to call MDHHS. Petitioner's testimony is also dubious when factoring that eight months passed from the time her employment began through the end of the OI month.

The evidence established that Petitioner received an OI of \$1,732 in FAP benefits from September 2021 through March 2022 due to client error. Thus, MDHHS established a \$1,732 claim against Petitioner.

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 \$1,732 for FAP benefits over-issued to Petitioner from September 2021 through March 2022 due to client error. The MDHHS action to establish against Petitioner a recipient claim is **AFFIRMED**.

CG/mp


Christian Gardocki
Administrative Law Judge

³ Petitioner claimed she did not receive a Notice of Case Action dated May 27, 2021, which included instructions that clients are to report employment income changes to MDHHS within 10 days. Exhibit A, pp. 48-52. Petitioner's claim was inconsistent with her confirmation that the mailing address on the notice was correct. Petitioner's claim is also irrelevant as Petitioner did not deny knowledge of the responsibility to report income.

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-Recoupment-Hearings

MDHHS-Macomb-36-Hearings

D. Sweeney

M. Holden

MOAHR

BSC4

Via-First Class Mail :

Petitioner

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] MI [REDACTED]