



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: July 25, 2023
MOAHR Docket No.: 23-003424
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 July 20, 2023. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Julie Luczak, recoupment specialist.

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 August 6, 2019, Respondent submitted FAP renewal documents to MDHHS reporting [REDACTED] (hereinafter, "LTP") as a household member and no household employment income.
2. As of April 2020, MDHHS budgeted a monthly housing obligation of \$650 for Petitioner.
3. Beginning April 27, 2020, LTP received ongoing biweekly unemployment compensation benefits (UCB) of at least \$[REDACTED].
4. From May through July 2020, MDHHS issued \$509 in monthly FAP benefits to Petitioner based on LTP having no UCB.

5. As of July 2020, Petitioner had not reported LTP's UCB to MDHHS.
6. On June 1, 2023, MDHHS calculated that Petitioner received \$509 in over-issued FAP benefits in May 2020 based on a household unearned income of \$ [REDACTED] and a rent obligation of \$0.
7. On June 1, 2023, MDHHS calculated that Petitioner received \$509 in over-issued FAP benefits in June 2020 based on a household unearned income of \$ [REDACTED] and a rent obligation of \$0.
8. On June 1, 2023, MDHHS calculated that Petitioner received \$509 in over-issued FAP benefits in July 2020 based on a household unearned income of \$ [REDACTED] and a rent obligation of \$0.
9. On June 1, 2023, MDHHS mailed Petitioner a Notice of Overissuance stating Petitioner received \$ [REDACTED] in over-issued FAP benefits from May through July 2020 due to client error.
10. On June 10, 2023, Petitioner requested a hearing to dispute the alleged OI of 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 the 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 (RFT).

Petitioner requested a hearing to dispute MDHHS's attempt to establish a recipient claim for allegedly over-issued FAP benefits. Exhibit A, pp. 4-8. A Notice of Overissuance dated June 1, 2023, alleged Petitioner received \$1,527 in over-issued FAP benefits from May through July 2020 due to client error. Exhibit A, pp. 11-16.

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 the benefit issuance exceeds the amount allowed by policy; however, state agencies may not pursue amounts more than 72 months before becoming aware of the overpayment. 7 CFR 273.18(c)(i). MDHHS sent Petitioner a Notice of Overissuance in June 2023. Accepting the Notice of Overissuance mailing date as the date of MDHHS's awareness, MDHHS is not barred by timeliness from pursuing a claim against Petitioner for an OI period beginning May 2020 based on client error.

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 federal regulations in its policy. BAM 105 (January 2020) p. 7.

Respondent submitted redetermination documentation to MDHHS on August 6, 2019, and reported no household employment income. Exhibit A, pp. 35-36. There was no evidence that MDHHS budgeted employment income for any of Respondent's benefit group members from the submission date through the end of the alleged OI period. Given the evidence, Respondent was a change reporter, and therefore, obligated to report to MDHHS the start of new household income within 10 days.

MDHHS specifically alleged that Petitioner received an OI due to failing to report UCB for LTP. MDHHS is to count UCB of FAP benefit group members.³ BEM 503 (January 2020) pp. 36-37. It was not disputed that LTP was a benefit group member throughout the alleged OI period. UCB records listed at least \$ [REDACTED] in biweekly income to LTP from April 27 through July 2020. Exhibit A, pp. 26-31.

For client-errors, MDHHS is to begin the OI period 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. Adding 32 days to a change date of April 27, 2020 allows MDHHS to begin the alleged OI period no earlier than June 2020. MDHHS alleged an OI of \$509 for May 2020. Because MDHHS incorrectly counted May 2020 as the first

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.

³ LTP received PUA as part of the UCB. PUA is countable in FAP eligibility.

month of the alleged FAP-OI period. MDHHS will be denied its request for a claim of \$509 for May 2020.

MDHHS calculated that Respondent received a FAP-OI of \$509 for June 2020. MDHHS presented a FAP-OI budget for June 2020 demonstrating how an OI was calculated. Exhibit A, pp. 22-23. For June 2020, MDHHS determined that the group's net income exceeded the net income limit. For such a determination, MDHHS should have used the same income and expenses from original budgets other than the inclusion of LTP's allegedly unreported UCB. The original FAP budget for June 2020 listed \$650 in housing expenses. Exhibit A, p. 34. Notably, the FAP-OI budget for June 2020 counted \$0 for housing expenses. MDHHS provided no valid explanation for not counting Petitioner's housing expenses when calculating an OI for June 2020. By not factoring Petitioner's housing expenses for June 2020, the evidence failed to establish that MDHHS correctly calculated a FAP-OI for June 2020.⁴ Thus, MDHHS will be denied its recipient claim against Petitioner of \$509 for June 2020.

MDHHS presented a FAP-OI budget demonstrating how an OI was calculated for July 2020. Exhibit A, pp. 24-25. An actual issuance totaling \$509 was taken from documentation of Petitioner's past issuances. Exhibit A, p. 18. MDHHS properly calculated LTP's three UCB payments in July and Respondent's Supplemental Security Income for a total unearned income of \$[REDACTED] which exceeded the gross income limit of \$3,565 for a three-person group. By exceeding the gross income limit, Petitioner's housing expenses are irrelevant. Using the procedures in BEM 556 for calculating FAP benefits, an OI of \$509 was calculated.

Petitioner's testimony acknowledged that she did not timely report LTP's UCB income to MDHHS.⁵ Petitioner also testified that she was unaware of the income. Despite Petitioner's claimed ignorance of the income, it was her responsibility to timely report the income to MDHHS. The evidence established an OI based on a client error.

The evidence failed to establish that MDHHS correctly calculated an OI against Petitioner of \$1,018 for May and June 2020 due to client-error. The evidence established that Respondent received \$509 in over-issued FAP benefits in July 2020 due to unreported UCB. Thus, MDHHS established a recipient claim against Petitioner for \$509 due to client error; MDHHS will be denied its request for a claim of \$1,018 for May and June 2020.

⁴ The same conclusion may be made for the FAP-OI budget for May 2020 (see Exhibit A, pp. 20-21).

⁵ Petitioner's acknowledgement was consistent with comments by MDHHS staff which did not document a timely reporting of income by Petitioner. Exhibit A, p. 10.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established against Petitioner a \$509 claim for FAP benefits over-issued in July 2020 due to client error. The MDHHS action to establish against Petitioner a recipient claim of \$509 from a requested claim of \$1,527 is **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish against Petitioner a \$1,018 claim for FAP benefits over-issued from May through June 2020. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Delete the \$1,018 claim against Petitioner for FAP benefits allegedly over-issued in May and June 2020; and
- (2) Issue a supplement for any benefits incorrectly recouped; and
- (3) Issue written notice in accordance with policy.

The MDHHS action to establish against Petitioner a recipient claim of \$1,018 from a requested claim of \$1,527 is **REVERSED**.

CG/mp



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 :

Interested Parties

MDHHS-Recoupment-Hearings

MDHHS-Wayne-41-Hearings

D. Sweeney

M. Holden

MOAHR

BSC4

Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]