



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 4, 2023
MOAHR Docket No.: 23-003817
Agency No.: [REDACTED]
Petitioner: [REDACTED] [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 August 2, 2023. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Alisha Young, recoupment specialist.

ISSUES

The issue is whether MDHHS established against Petitioner a recipient claim for Food Assistance Program (FAP) benefits 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 January 2021, Petitioner was an ongoing recipient of FAP benefits.
2. On January [REDACTED] 2021, Petitioner was hired with [REDACTED] [REDACTED] [REDACTED] [REDACTED] (hereinafter, "Employer").
3. On February 15, 2021, MDHHS received a Wage Match report concerning Petitioner's employment with Employer.
4. On [REDACTED] [REDACTED] 2021, Petitioner submitted to MDHHS a Redetermination form reporting no employment income.
5. From July 9, 2021, through June 2022, Petitioner received ongoing biweekly income from Employer.

6. From July 2021 through June 2022, MDHHS issued a total of \$[REDACTED] in FAP benefits to Petitioner based on \$0 wages from Employer.
7. On June 27, 2022, MDHHS referred Petitioner's case to the Recoupment Unit.
8. On June 29, 2022, MDHHS closed Petitioner's FAP eligibility due to excess income.
9. On June 30, 2022, Petitioner submitted a Redetermination form to MDHHS reporting ongoing wages from Employer.
10. On June [REDACTED] 2023, MDHHS calculated that Petitioner received \$[REDACTED] in FAP benefits from July 2021 through June 2022 due to MDHHS's failure to timely budget Petitioner's income from Employer.
11. On June [REDACTED] 2023, MDHHS mailed a Notice of Overissuance stating that Petitioner received \$[REDACTED] in over-issued FAP benefits from July 2021 through June 2022 due to agency error.
12. On June 12, 2023, 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 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. 6-7. A Notice of Overissuance dated June 12, 2023, stated that Petitioner received \$[REDACTED] in over-issued FAP benefits from July 2021 through June 2022 due to agency error. Exhibit A, pp. 8-13.

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 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 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.

Clients requesting 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 only because of MDHHS's fault. Federal regulations and MDHHS policy 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. *Id.*, p. 5. In the present case, MDHHS seeks a claim for an OI period ending June 2022. Petitioner's case was referred to a recoupment specialist that same month. Exhibit A, p. 98. Going back 12 months from the referral date precludes a claim agency error earlier than June 2021. Thus, MDHHS is not precluded from pursuing a claim for an OI period beginning June 2021.

MDHHS testified that an OI was caused by its failure to timely process internal reports indicating that Petitioner was employed. An Employer New Hire Information Request report dated February 15, 2021, indicated new employment for Petitioner with Employer. Exhibit A, p. 122. MDHHS must take action and issue notice to the client within 10 days of a change resulting in a FAP benefit decrease.² BAM 220 (January 2021) pp. 7-8. MDHHS should have followed-up with Petitioner by requesting information about the new employment within 10 days; MDHHS did not and acknowledged that any over-issued benefits were caused by its error. Instead, MDHHS did not budget Petitioner's wages from Employer until Petitioner reported the employment on a Redetermination form dated June 1, 2022.³ Exhibit A, pp. 109-113

A claim based on untimely budgeted income requires that unbudgeted income caused an OI. MDHHS presented FAP-OI budgets from July 2021 through June 2022 demonstrating how an OI was calculated. Exhibit A, pp. 18-42. Actual FAP issuances totaling \$██████ were taken from documentation of Respondent's FAP issuance history. Exhibit A, pp. 14-17. Presumably, correct FAP benefits were calculated from the same group size, income, and expenses from original budgets other than including Respondent's actual gross income

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 Changes reported by tape match have a 15-day timeline for processing (see *Id.*).

³ Petitioner submitted a second Redetermination form to MDHHS earlier in the day which did not report wages from Employer. Exhibit A, pp. 105-108.

from Employer.⁴ MDHHS obtained Petitioner's actual wages from pay documents from Employer. Exhibit A, pp. 46-97. For each month, MDHHS concluded that Petitioner was ineligible for FAP benefits due to excess net or gross income. Petitioner did not allege that any budgets were incorrect. Using the procedures set forth in BEM 556 for calculating FAP eligibility, an OI of \$[REDACTED] was calculated.

Petitioner testified that she emailed her specialist in February 2021 to report employment. Petitioner's testimony implied that she should not have to repay over-issued FAP benefits because of her allegedly timely reporting. As stated above, MDHHS sought a claim based on agency error, not client error; thus, it is irrelevant whether MDHHS erred in failing to process Petitioner's timely reporting of wages. Furthermore, Petitioner's claim of a timely reporting was uncorroborated and not credible. Petitioner failed to report wages from Employer on a Redetermination form dated June 3, 2021, despite her reporting being subject to penalties of perjury. Exhibit A, pp. 128-130. A written misreporting of income is not indicative of an earlier timely reporting of income.

The evidence established that Petitioner received an OI of \$[REDACTED] in FAP benefits from July 2021 through June 2022 due to agency-error. Thus, MDHHS established a recipient claim of \$[REDACTED] against Petitioner for agency error.⁵

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 \$[REDACTED] for FAP benefits over-issued to Petitioner from July 2021 through June 2022 due to agency error. The MDHHS actions to establish against Petitioner a recipient claim are **AFFIRMED**.

CG/dm


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).

⁴ Factoring gross income is compliant with employment income policy (see BEM 501) and factoring actual income is compliant with policy directing how to calculate an OI based on agency error (see BAM 705).

⁵ Petitioner also testified she sought a hearing to establish a payment arrangement for the claim. Petitioner's concern is premature as a claim had not yet been established. Petitioner can call MDHHS for possible payment arrangements after receiving notice of MDHHS's pursuit of the claim.

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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Via-First Class Mail :

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