



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]
MI [REDACTED]

Date Mailed: October 17, 2023
MOAHR Docket No.: 23-003628
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 telephone hearing was scheduled on July 26, 2023. Shortly after commencement of the hearing, an adjournment was granted so that the Department of Health and Human Services (MDHHS) could request assistance of counsel with the Michigan Department of the Attorney General.

After due notice, a second hearing date was scheduled on August 14, 2023. Petitioner appeared and was represented by Attorney Elisa Gomez (P74222). MDHHS was represented by Minnie Egbonu, Overpayment Establishment Analyst, as a MDHHS witness. Ms. Egbonu stated that she failed to request representation with the Michigan Department of the Attorney General. The hearing commenced without MDHHS legal representation. Opening statements were made by both parties. Exhibit A was admitted on behalf of MDHHS. No witness testimony was taken.

On August 16, 2023, an Order for Continuance and Notice of Continued Hearing was issued, with the continued hearing scheduled for September 13, 2023.

On September 13, 2023, Counsel for Petitioner requested the hearing be adjourned so that Petitioner may be present. Petitioner's first request for adjournment was granted.

After due notice, a telephone hearing was held on October 9, 2023. Petitioner appeared and was represented by Attorney Elisa Gomez (P74222). The Department of Health and Human Services (MDHHS) was represented by Assistant Attorney General Kelly Carter (P56129). Minnie Egbonu, Overpayment Establishment Analyst, testified as a MDHHS witness. No additional witnesses testified. No exhibits were admitted. The hearing was completed on October 9, 2023.

ISSUES

1. Did Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits that MDHHS is entitled to recoup?
2. What amount may MDHHS administratively recoup from Petitioner due to overissued 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. Petitioner was an ongoing recipient of FAP for a group size of three, consisting of his two minor children and himself.
2. On or about April 21, 2022, Petitioner's minor children left his household to live full-time with their mother.
3. On May 11, 2022, Petitioner submitted a Change Report to MDHHS reporting that his two minor children no longer lived with him and were living with their mother (Exhibit a, pp. 48-49).
4. From June 1, 2022 through April 30, 2023, Petitioner received \$7,812.00 in FAP benefits for a group size of three (Exhibit A, pp. 15-18).
5. On May 22, 2023, an Overissuance Referral was made to the Recoupment Specialist to review whether Petitioner was overissued FAP benefits that MDHHS is able to recoup (Exhibit A, pp. 60-61).
6. On June 12, 2023, MDHHS issued a Notice of Overissuance to Petitioner informing him that MDHHS had determined that he received an Agency Error Overissuance from June 1, 2022 through April 30, 2023 in the amount of \$5,105.00 because MDHHS had failed to update Petitioner's group size and re-assess his eligibility (Exhibit A, pp. 8-13).
7. On June 26, 2023, Petitioner requested a hearing to dispute MDHHS' recoupment of overissued FAP benefits due to agency error (Exhibit A, pp. 4-6).

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 [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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner disputes the recoupment of overissued FAP benefits due to agency error, from June 1, 2022 through April 30, 2023, in the amount of \$5,105.00.

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 (October 2018), pp. 1-2. An agency error OI is caused by incorrect actions by MDHHS, including delayed or no action, which result in the client receiving more benefits than they were entitled to receive. BAM 705 (October 2018), p. 1. Here, MDHHS concedes that the Department failed to take action when Petitioner reported that his group size had changed from a group size of three to group size of one. Therefore, any OI resulted from agency error.

The amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, pp. 4-6; BAM 705 (October 2018), pp. 1-6. The overissuance period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the recoupment specialist, whichever 12-month period is later. BAM 705, p. 5. MDHHS testified that since the overissuance was referred to the recoupment specialist on May 22, 2023, the OI period began 12 months prior on June 1, 2022. Petitioner's FAP case was updated to accurately reflect his group size and income, effective May 1, 2023. Therefore, MDHHS acted in accordance with policy in determining that the OI period is June 1, 2022 through April 30, 2023.

MDHHS calculated the OI total for this period by calculating what Petitioner's FAP budget would have been for the accurate group size during each month of the OI period. MDHHS testified that the change in group size was the only change made to Petitioner's household budget when calculating the OI amount. From June 1, 2022 through April 30, 2023, Petitioner received \$7,812.00 in FAP benefits for a group size of three (see Exhibit A, pp. 15-18). Upon review, as a group size of one, Petitioner was only eligible to receive \$2,707.00 during the OI period (see Exhibit A, pp. 23-35). In reviewing the issuance summary and household budgets, MDHHS properly calculated Respondent's overissuance amount to be \$5,105.00.

Despite the overissued benefits being due to agency error, MDHHS nevertheless is entitled to recoup benefits that were overissued. All cases that contain an adult member from the original overissuance group and are active for the program in which the overissuance occurred are liable for the overissuance and subject to administrative recoupment. BAM 725 (January 2021), p. 3. Therefore, MDHHS is entitled to recoup the

overissued FAP benefits from Petitioner. Overissuances on active programs are repaid by lump-sum cash payments, monthly cash payments, such as when court-ordered or processed by Attorney General's, or administrative recoupment (benefit reduction). BAM 725, p. 5. Active programs are subject to administrative recoupment for repayment of overissuances. Active program recipients are allowed to make monthly cash payments (instead of administrative recoupment) *only* when ordered by a court or processed by the Attorney General's office. Administrative recoupment continues until program closure or all collectible overissuances are repaid. BAM 725, p. 6 (Emphasis Added). FAP benefits are reduced for recoupment by a percentage of the monthly FAP entitlement. Administrative recoupment occurs only on current month issuances and automatically changes when the monthly issuance amount changes. The minimum administrative recoupment amount is \$10, unless the final overissuance payment is less than \$10. The standard administrative recoupment percentage for FAP for an OI due to agency error, is 10 percent (or \$10, whichever is greater). The standard administrative recoupment percentage is used *unless* a court has ordered a different administrative recoupment percentage or a specific dollar amount. BAM 725, p. 8 (Emphasis Added).

MDHHS can compromise (reduce or eliminate) an overissuance if it is determined that a household's economic circumstances are such that the overissuance cannot be paid within three years. 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. 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

BAM 725, p. 16.

Petitioner argues that rather than repaying the standard recoupment amount of 10%, he should be ordered to pay a \$5.00 per month towards the OI total. Policy clearly states that making monthly cash payments rather than administrative recoupment, and in the amount less than \$10, can not be made unless court ordered. The Bridges Policy, which governs FAP benefit cases, defines "Administrative Hearings" as conducting administrative hearings and rendering Decisions and Orders, as part of the Michigan Office of Administrative Hearings and Rules (MOAHR) within the Department of Licensing and Regulatory Affairs (LARA). An administrative law judge (ALJ) is an employee of MOAHR within LARA and conducts the administrative hearing. BPG Glossary (January 2022), p. 2. "Court" is not defined within the Bridges Glossary. However, it is noted that throughout the Bridges manual, various policies make the distinction by stating "administrative hearing decision or court order". This indicates that the intent of the Bridges policy was that the ALJ's decision would not be considered a

court order. This is further supported in that appeals of the ALJ decision are made to the Circuit Court. The undersigned interprets the policy BAM 725 to intend that only the Circuit Court may order a change in the standard recoupment of benefits. Additionally, per BAM 725, only MDHHS may order a compromised claim. Therefore, the undersigned is only able to order the standard recoupment of benefits in an overissuance case. MDHHS is entitled to repayment from Petitioner of \$5,105.00 in overissued FAP benefits from June 1, 2022 through April 30, 2023, recouped as outlined in policy.

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 MDHHS acted in accordance with Department policy when calculating the OI in Petitioner's FAP benefits.

DECISION AND ORDER

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



Danielle Nuccio
Administrative Law Judge

DN/mp

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 :

Counsel for Respondent
AG-HEFS-MAHS

Interested Parties

MDHHS-Recoupment-Hearings
MDHHS-Wayne-57-Hearings

D. Sweeney

M. Holden

MOAHR

BSC4

Via-First Class Mail :



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