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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

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DIRECTOR

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Date Mailed: October 25, 2024
MOAHR Docket No.: 24-010059
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 October 17, 2024, via teleconference. Petitioner was represented by his Authorized Hearing Representative (AHR), ██████████. Kathleen Zewatski, Overpayments Establishment Analyst, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department). Petitioner’s proposed exhibit was admitted into evidence at the hearing as Petitioner’s Exhibit 1, p. 1. MDHHS’ Hearing Packet was admitted into evidence at the hearing as MDHHS Exhibit A, pp. 1-84.

ISSUE

Did MDHHS properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP)/Michigan Combined Application Project (MiCAP) benefits based on 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. Beginning ██████████ 2020, Petitioner received Retirement, Survivors, and Disability Insurance (RSDI) income (Exhibit A, p. 66).
2. On ██████████ 2021, Petitioner applied for MiCAP benefits (Exhibit A, p. 31).
3. On September 9, 2021, MDHHS sent Petitioner a Notice of Case Action indicating that he was approved for MiCAP benefits, beginning September 7, 2021 (Exhibit A, p. 37).

4. On September 7, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that his FAP case would be closed, effective September 1, 2023 ongoing (Exhibit A, p. 58). The reason for the closure was that Petitioner was ineligible for MiCAP due to the receipt of RSDI income (Exhibit A, p. 58).
5. On August 20, 2024, MDHHS sent Petitioner a Notice of Overissuance, indicating that he received more FAP benefits than he was eligible to receive from September 1, 2022 to August 31, 2023 (OI period) (Exhibit A, p. 79). The Notice indicated that the OI amount as \$3,683.00 and that the OI was due to agency error because MiCAP was an SSI-only program and Petitioner was receiving RSDI income (Exhibit A, p. 79).
6. On August 29, 2024, Petitioner requested a hearing regarding the alleged OI (Exhibit A, pp. 3-11).

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.

The Michigan Combined Application Project (MiCAP) is a Food Assistance demonstration project approved by the Food and Nutrition Service (FNS). BEM 618 (October 2020), p. 1. MiCAP is a series of waivers that allows MDHHS to issue Food FAP to Supplemental Security Income (SSI) individuals who qualify for this program. *Id.* The program is administered by the centrally located MiCAP unit. *Id.* The targeted MiCAP population is SSI individuals with the following characteristics: age 18 or older; receives SSI income and no other type of income; meets the Social Security Administration (SSA) definition of independent living (living arrangement code A); resides in Michigan; and purchases and prepares food separately. BEM 618 (April 2018), p. 1. An individual cannot receive both MiCAP and FAP in the same month and the MiCAP group composition size is always a group of one. BEM 618, pp. 3-4.

In this case, MDHHS alleged that Petitioner received an OI of FAP benefits because it wrongfully approved Petitioner for the MiCAP program at application. Although the alleged OI began at application, MDHHS requested to recoup benefits from Petitioner from September 1, 2022 to August 31, 2023 (OI period), because it can only recoup benefits based on agency error from the latest 12 months. BAM 705 (June 2024), p. 3.

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), 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 715 (October 2017), p. 6. An OI can be caused by client error, agency error, or an intentional program violation (IPV). 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.*

Here, MDHHS testified that Petitioner was not eligible for MiCAP because although he was an SSI recipient, he was also receiving RSDI and employment income. MDHHS introduced evidence that Petitioner was receiving RSDI income beginning in January 2020 (Exhibit A, p. 66). Additionally, Petitioner had employment income during the OI period (Exhibit A, p. 67). Petitioner did not dispute that he received this income. Because MiCAP is only available to SSI recipients who are not receiving any other type of income, MDHHS established that Petitioner was not eligible for the program.

MDHHS introduced evidence to show that Petitioner received \$3,683.00 in ongoing and supplemental FAP benefits during the alleged OI period (Exhibit A, p. 76). Because he was not eligible to receive any FAP benefits through MiCAP during this period, MDHHS properly determined that he was overissued \$3,683.00 in FAP benefits.

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 Department acted in accordance with Department policy when it determined that Petitioner received an OI based on agency error

DECISION AND ORDER

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

LJ/pt


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:

DHHS

Nicolette Vanhavel
235 S Grand Ave Ste 1403
Lansing, MI 48933

MDHHS-MiCAP-Hearings@michigan.gov

DHHS Department Rep.

Overpayment Establishment Section (OES)
235 S Grand Ave Ste 811
Lansing, MI 48909

MDHHS-RECOURPMENT-HEARINGS@Michigan.gov

Interested Parties

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M Holden
B Cabanaw
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MOAHR

Via-First Class Mail:

Authorized Hearing Rep.

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Petitioner

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