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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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Date Mailed: November 8, 2024
MOAHR Docket No.: 24-011303
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 21, 2024, via teleconference. Petitioner appeared and represented herself. Kathleen Zewatsky, Overpayments Establishment Analyst, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department). MDHHS’ Hearing Packet was admitted into evidence at the hearing as MDHHS Exhibit A, pp. 1-62.

ISSUE

Did MDHHS properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits due to an 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. Petitioner was an ongoing recipient of FAP benefits.
2. On ██████████ 2022, Petitioner submitted an application for FAP benefits (Exhibit A, pp. 51-54).
3. On May 24, 2022, MDHHS sent Petitioner a Notice of Case Action, approving FAP benefits for a household of one, beginning May 10, 2022 (Exhibit A, p. 21). The FAP budget was based no income and indicated that changes affecting eligibility must be reported to MDHHS within ten days (Exhibit A, pp. 22-24).

4. On February 7, 2023, Petitioner submitted a change report to MDHHS and indicated that she was receiving employment income and monthly disability benefits, beginning [REDACTED], 2023 (Exhibit A, p. 58).
5. On September 26, 2024, MDHHS sent Petitioner a Notice of Overissuance indicating that Petitioner was overissued FAP benefits in the amount of \$562.00 during the period of March 1, 2023 to April 30, 2023 (OI Period) (Exhibit A, p. 4). The notice stated that the OI was due to agency error because the agency failed to act on information received from the Social Security Administration (SSA) regarding Petitioner's Retirement, Survivors and Disability Insurance (RSDI) income (Exhibit A, p. 4).
6. On October 4, 2024, Petitioner requested a hearing regarding the alleged FAP OI (Exhibit A, p. 5).

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.

In this case, MDHHS determined that Petitioner received an OI of FAP benefits due to an agency error because it failed to properly budget Petitioner's RSDI income.

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 705 (October 2018), p. 6. An OI can be caused by client error, agency error, or an intentional program violation. 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.* Conversely, a client error occurs when the OI was due to the client giving incorrect or incomplete information to MDHHS. BEM 700, p. 7.

To calculate a client's FAP benefit rate, MDHHS must consider all countable earned and unearned income. BEM 500 (April 2022), pp. 1-5. Here, MDHHS testified that it did not properly act on information received from SSA regarding Petitioner's RSDI income, which led to an OI of FAP benefits. MDHHS presented evidence that Petitioner received \$[REDACTED] per month in RSDI benefits (Exhibit A, p. 47). Petitioner did not dispute that

amount. MDHHS presented FAP OI Budgets which recalculated Petitioner's FAP benefit rate after adding the RSDI income (Exhibit A, pp. 17-20). The budgets show that Petitioner was not eligible for any FAP benefits during the OI Period due to excess income. During that time, Petitioner received \$562.00 in FAP benefits (Exhibit A, p. 15). Because Petitioner was not eligible for any FAP benefits during that time, MDHHS properly determined that Petitioner was overissued \$562.00 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 MDHHS acted in accordance with Department policy when it determined that Petitioner received an OI of FAP benefits due to 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:

Agency Representative

Kathleen Zewatsky
Overpayment Establishment Section (OES)
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Interested Parties

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Via-First Class Mail:

Petitioner

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