STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM DEPARTMENT OF HEALTH AND HUMAN SERVICES

IN THE MATTER OF:

MAHS Docket No. XXXXXXX Agency No.: XXXXXX

Petitioner,

v.

Respondent.

PETITIONER'S BRIEF IN SUPPORT OF MAHS JURISDICTION Introduction

Petitioner is entitled to a fair hearing before an administrative law judge to contest the Respondent's denial of her request to compromise her agency-caused overissuance of food assistance benefits. Petitioner is entitled to such a hearing pursuant to federal law, BAM 600, and the Michigan Administrative Hearing System's delegation of authority.

Background

Overissuance

On September 17, 2017, Respondent notified Petitioner that it had overpaid her \$1,769 in food benefits between September 2016 and August 2017 as a result of an agency error. Exhibit 1. Although Petitioner reported only \$29.40 in medical expenses during her 2016 recertification, Respondent incorrectly budgeted \$710 a month in medical expenses. Respondent apparently added together all of the medical expenses Petitioner submitted between March 2010 and January 2016 and then made the total of these expenses recur every month going forward. Waiver Request

Respondent then began recouping \$10 or 10%, whichever was greater, of Petitioner's food benefits each month. On October 2, 2017, Petitioner asked Respondent waive or reduce the

recoupment of this overissuance because the collection of these funds caused her a financial hardship, and provided detailed information about her limited income and regular expenses. Exhibit 2.

On November 6, 2017, Petitioner sent a follow-up letter providing more detailed and accurate information about her substantial out-of-pocket medical expenses. Exhibit 3. On November 22, Petitioner sent Respondent still more information about and receipts for medical expenses (doctor-recommended over-the-counter medications). Exhibit 4.

On December 4, 2017, Respondent denied Petitioner's waiver request. Exhibit 5. In this letter, one of Respondent's employees stated that "When an individual is active for FAP benefits the Department will seek recovery of claims through automatic recoupment" and "Repayment at \$10 per month is lower than what I can do on a compromise." *Id.* This apparent Respondent policy is not articulated in the BAM. This letter did not inform Petitioner of her right to request a fair hearing.

On December 28, 2017, Petitioner responded to Respondent' denial of the overissuance waiver by requesting that her administrative recoupment period (at the statutory rate of 10% or \$10, whichever is greater) be reduced to three years, and after three years, the remaining balance be eliminated. Exhibit 6.

Respondent never responded in writing to Petitioner's December 28, 2017 request. In a phone call on January 5, 2018, Petitioner's attorney was told that Respondent would not agree to compromise Petitioner's claim as requested because it does not compromise claims of active FAP recipients.

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Petitioner then filed the hearing request in this case, seeking a review of Respondent' decision to deny her requests to waive or compromise her overissuance based on the financial hardship caused by the recoupment of these funds.

Respondent Overissuance Waiver Policy

BAM 725 provides that Respondent 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." This is the only Respondent policy regarding compromising overissuances that is published and available to the public.

Respondent, however, appears to have several additional policies and procedures that are not published or publically available. First, as stated in Respondent' hearing packet in this action, Respondent will not compromise an overissuance when the claimant continues to receive benefits and the overissuance is being collected through an administrative recoupment. Second, an internal memo obtained through a Freedom of Information Act (FOIA) request contains more detailed procedures and policies to be applied when Respondent evaluates requests. The memo explains that Respondent denies any request to compromise an overissuance that does not meet one of four specific categories: (1) high out-of-pocket medical expenses, (2) client in a nursing/group home, (3) extreme emergencies, and (4) hardship plus agency-caused overissuance greater than \$1,800. Exhibit 7. If a compromise request falls into one of these categories, the memo directs staff to gather supporting documentation on these issues. *Id.*

Hearing Request on Overissuance

In addition to asking Respondent to waive or compromise the overissuance, Petitioner filed a hearing request to determine whether the overissuance was correctly calculated. After reviewing documentation provided by Respondent in response to the hearing request, Petitioner

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withdrew her request for hearing because the amount of the overissuance was correctly calculated. At that time, Respondent had not yet made a decision on her compromise request.

Argument

MAHS is required to review Respondent denials of FAP overissuance compromise requests on three grounds: (1) under federal law, (2) under BAM 600, and (3) under the MAHS delegation of authority. Moreover, providing a fair hearing in such cases is consistent with the principles of due process and the purposes of the Administrative Procedures Act.

I. Respondent is required by federal law to provide a fair administrative hearing in this case.

The federal law and regulations governing the SNAP program require state agencies to provide fair hearings "to any household aggrieved by any action of the State agency which affects the participation of the household in the Program." 7 C.F.R. 273.15(a); *See also* 7 U.S.C. 2020(e)(10).¹ Moreover, the regulations provide that a "State agency must not deny or dismiss a request for hearing unless," the request is untimely, the claimant fails to appear, or the claimant withdraws his or her request. 7 C.F.R. § 273.15(j)(1). In addition to these federal requirements, Michigan's state statute governing agency recoupment actions specifically require that "[p]rocedures for the recovery of overpayments made under federally assisted programs shall be consistent with federal law and regulations." MCL 400.43a.

Here, Petitioner has been aggrieved by Respondent' denial of her request to compromise her overissuance. This action affects her participation in the FAP program. As a result of the denial, Respondent is continuing to recoup a portion of her food benefits each month. This reduces the amount of benefits she receives each month under the program. Respondent has not alleged that Petitioner's request was untimely (nor could it given that it failed to inform her of

¹ The regulations provide an exception only in the case of across-the-board reductions in benefits resulting from reductions in Congressional appropriations, which is not applicable in this case. *See* 7 C.F.R. 271.7(f).

her right to such a hearing), nor has Petitioner withdrawn her request.² Therefore, under federal law, Respondent is required to provide a fair hearing to Petitioner in this case. It cannot deny Petitioner's hearing request, which it has essentially done in this case by arguing that its decision is final and not reviewable by MAHS.

II. MAHS has jurisdiction because BAM 600 provides for a fair hearing in Petitioner's case.

BAM 600 ("Hearings") give all claimants "the right to contest a department decision affecting eligibility or benefit levels whenever they believe the decision is incorrect." BAM 600, page 1. The same manual allows MAHS to grant hearings about, among other things, a claimant's current level of FAP benefits, reductions in the amount of program benefits, and restrictions on which benefits or services are offered. BAM 600, page 5. Moreover, BAM 600 makes clear that "[t[he department provides an administrative hearing to review [the department's] decision and determine its appropriateness in accordance to policy." *Id.*, page 1.

Petitioner is currently receiving food assistance benefits from Respondent. Each month, Petitioner is denied ten or more percent of her food benefits because of Respondent's recoupment of her overissuance. Petitioner's monthly food assistance benefits are calculated each month according to her financial need, including her high out-of-pocket medical expenses. Recouping a portion of these benefits amounts to a reduction in benefit levels; Petitioner is not entitled to retain and spend all of her issued FAP benefits because of the recoupment. Petitioner's projected fourteen-year recoupment schedule is also a "restriction" under which current FAP benefits are issued to Petitioner. If Respondent grants Petitioner's request, her monthly benefits would increase and a restriction on her benefit would be lifted.

² Last fall, Petitioner withdrew her request for hearing challenging the overissuance, but she has not withdrawn her hearing request based on RESPONDENT' denial of her request to compromise her overissuance. This denial did not occur until after Petitioner withdrew her first hearing request and therefore the withdrawal of that request cannot be used as grounds to deny Petitioner's right to a hearing in this case.

For these reasons, BAM 725 is not the only relevant authority, and it does not deny

MAHS jurisdiction to review waiver denials. As BAM 600 states, claimants like Petitioner are entitled to hearings contesting their benefit levels, and MAHS has the authority to grant a hearing where a food assistance claimant contests these benefit levels or restrictions under which benefits are offered.

III. MAHS has jurisdiction because it has been delegated unlimited authority to issue proposals for final decisions.

Besides BAM 600, MAHS jurisdiction is supported by Section 120 ("Delegation of

Authority") of the Administrative Hearing Pamphlet, because this section indicates that MAHS's

authority to issue proposals for final decisions is not limited to specific contested cases. This

section provides that:

The delegation of final decision authority applies to, contested cases held under MCL 330.1236, 330.1238, 330.1407, 330.1536 MCL 400.9, MCL 400.112g MCL 500.287, MCL 333.12613, MCL 400.112g, 7 CFR 246.1 et seq., 42 CFR 431.200 et seq., and Michigan Administrative Code 330.2052. <u>The delegation to issue proposals for final decisions applies to, but is not limited to, contested case held under MCL 400.111c (1) (b)</u>.

Administrative Hearing Pamphlet, page 1 (emphasis added). The drafters of the Administrative Hearing Pamphlet could have limited MAHS's authority to issue proposals for final decisions if they intended to do so. This is clear based on the express limitation of final decision authority to contested cases arising under specific statutes and regulations. Since MAHS's authority to issue proposals for final decisions "is not limited to" particular cases brought under specific statutes, MAHS at least has jurisdiction to issue a proposal for a recommended decision to Respondent on Petitioner's request to compromise her claim.

Michigan court decisions support this interpretation, confirming that "is not limited to" confers broad discretion on an agency to use authority. For instance, in *Estate of Bacon by Bacon*

v. DHHS, 2017 WL 2390673 (Mich.App. 2017), the court considered the amount of discretion given to Respondent based on the language in M.C.L. 112(3)(e), which states that "[t]he department of community health shall develop a definition of hardship according to section 1917(b)(3) of title XIX that includes, but is not limited to, the following" M.C.L. 112(3)(e). The court determined that "the Legislature also provided express language ("includes, but not limited to, the following") granting the [the Department] discretion to include other requirements for the hardship exemption." *Id.* at 3.

Like the DHHS in *Bacon*, MAHS has authority to issue final proposals for decisions that "applies to, but is not limited to," certain contested cases. This shows that MAHS's ability to issue proposals for decisions and hear contested cases has no significant express or implied limitations.

IV. In addition to being required by state and federal law, granting a fair hearing in this case is consistent with the principles of due process and the purposes of the Administrative Procedures Act.

Congress enacted the APA to, among other things, protect individuals from arbitrary decision making, protect due process by ensuring adequate notice, promote uniformity in procedure, rulemaking, and adjudication, and ensure the development of a record at the administrative level in case of appeal. *See* Daniel F. Solomon, *Fundamental Fairness, Judicial Efficiency and Uniformity: Revisiting the Administrative Procedure Act*, 33 J. Nat'l Ass'n Admin. L. Judiciary Iss. 1, pp. 53-54 (2013); Hon. D. Randall Frye, *Statement of the Association of Administrative Law Judges*, 27 June 2012, pages 1-2. Moreover, a fair administrative hearing is essential to protecting a FAP recipient's due process rights. *See Goldberg v. Kelly*, 397 U.S. 254 (Sup.Ct. 1970).

Fair hearing procedures are especially important in this case because of the important

interest at stake and the heightened risk of an erroneous or arbitrary decision given Respondent's opaque policies and procedures. Petitioner has a critical interest in retaining even the small amount of food benefits recouped each month by Respondent as a result of an overissuance caused by its own error. *See Bliek v. Palmer*, 102 F.3d 1472, 1477 (8th Cir. 1997) ("the potential deprivation and the hardship [food benefit recipients] may incur in their attempt to repay the overissuances is substantial, even if by most standards the amount of money at stake may be quite small."). At the same time, the risk of an erroneous or arbitrary decision in this case is high because of the opacity of Respondent overissuance compromise policies and procedures. Specifically:

- Respondent does not notify claimants of their right to request a compromise;
- Respondent' publically available procedures for granting these requests, found in BAM 725, are vague and include no explanation of how Respondent determines that a households' "economic circumstances are such that an overissuance cannot be repaid within three years."
- Respondent actually applies more specific policies and procedures when considering these claims, but none of these policies or procedures are published, publically available, or made available to claimants when they request a compromise.

As a result of these procedures, claimants like Petitioner do not know that they have the option of requesting a compromise, what information they should submit to be considered for a compromise, or whether the policies Respondent has developed were properly applied in their case. Thus, in addition to being required by state and federal law, MAHS' review of Respondent' denial of requests to compromise claims are necessary to protect claimants' due process rights, to

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maintain consistency in Respondent procedures, and to serve as a check on potential abuses of discretion.

Conclusion

For the reasons stated above, we ask that MAHS find it has jurisdiction to review Respondent's decision not to compromise Petitioner's overpayment claim and grant Petitioner a fair hearing on the issue.