



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: October 18, 2018  
MAHS Docket No.: 18-008924  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE:** John Markey

**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 held on October 17, 2018, from Lansing, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Kim Kilmer, Hearings Coordinator, and Dawn McKay, Recoupment Specialist. During the hearing, a 59-page packet of documents was offered and admitted as Exhibit A, pp. 1-59.

**ISSUE**

Did Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup and/or collect?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On ██████████, 2016, Petitioner submitted to the Department an application for FAP benefits with a FAP group size of four, including Petitioner, her husband ██████████, and two children. Exhibit A, pp. 4-22.
2. During the application process, Petitioner informed the Department that Michael was working for ██████████ and provided verifications of his first three paystubs. Exhibit A, pp. 4-26.

3. The first paystub was for a partial pay per period and showed [REDACTED] only earning \$200. The next two, however, were for full two-week pay periods and amounted to \$817.50 and \$725. Exhibit A, pp. 25-26.
4. The Department approved Petitioner's FAP application and issued Petitioner FAP benefits of \$214 for November of 2016 and \$644 per month from December 1, 2016, through October 31, 2017. Exhibit A, pp. 28-29.
5. For the entire time period from November 21, 2016, through October 31, 2017, the Department calculated Petitioner's benefits based on a monthly income of [REDACTED]. Exhibit A, p. 24.
6. Petitioner's group income was substantially higher than [REDACTED] per month. Exhibit A, p. 27.
7. On August 15, 2018, the Department issued to Petitioner a Notice of Overissuance alleging that Petitioner received an OI of FAP benefits in the amount of \$3,646 from November 21, 2016, through October 31, 2017, due to agency error. The Department conceded that it improperly budgeted [REDACTED]'s monthly income. Exhibit A, pp. 55-57.
8. On August 22, 2018, Petitioner filed a request for hearing objecting to the Department's demand that Petitioner repay the Department.

### **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. The Department (formerly known as the Department of Human Services) 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, the Department is seeking to recoup an alleged \$3,646 overissuance of FAP benefits issued to Petitioner. The Department concedes that the overissuance was caused by the Department's error. The Department now seeks to recoup and/or collect that amount from Petitioner.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 2018), p. 1. An overissuance is the amount of benefits issued to the client group in excess of what it

was eligible to receive. BAM 700, p. 1. An agency error overissuance is caused by incorrect action (including delayed or no action) by the Department. BAM 705 (January 2016), p. 1. Recoupment of overissuances caused by agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 705, p. 1. However, if the overissuance amount is \$250 or higher, the Department must attempt to recoup the overissuance amount. BAM 700, p. 1.

In this case, Petitioner received \$214 in FAP benefits for the time period of November 21, 2016, through November 30, 2016, and \$644 in FAP benefits each month from December of 2016 through October of 2017. When calculating Petitioner's FAP benefit amount, the Department severely underestimated the group's monthly earned income, despite Petitioner providing the Department with paystubs that showed [REDACTED] earned substantially more than the amount budgeted. The Department's failure to include Petitioner's income into the budget resulted in the Department overissuing FAP benefits to Petitioner. Thus, the Department has presented sufficient evidence to establish that there was an overissuance of FAP benefits from November 21, 2016, through October 31, 2017.

However, the Department did not present sufficient evidence to substantiate its calculation of the overissuance amount. The Department calculated that during the overissuance period, the Department overissued Petitioner \$3,646 in FAP benefits. During the hearing, the Department provided the monthly overissuance budgets used to determine the amount Petitioner should have received. Each of those budgets includes a line item labeled child support expense amount. From month to month, the amount in the budget varied from as little as [REDACTED] for April of 2017 to as much as [REDACTED] for March of 2017. Ms. McKay testified that she obtained those numbers from a database showing actual child support payments made.

Petitioner, however, disagreed with the Department's findings regarding the group's child support payments. She testified that the amount was consistently either [REDACTED] every two weeks or [REDACTED] every two weeks. Petitioner's assertions at the hearing are consistent with the numbers reported on her application and the amount previously budgeted by the Department. Importantly, the Department did not present any documentary evidence to substantiate its claim that it used the actual payments made. Petitioner's disagreement with the amount used to calculate the budget along with an absence of evidence to support the Department's amount leaves the undersigned unable to determine whether the Department accurately calculated the amount of the overissuance.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish an agency error FAP benefit overissuance to Petitioner. However, the Department did not present sufficient evidence to determine the amount of that overissuance.

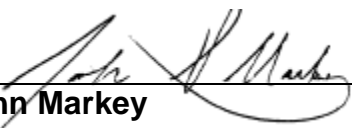
**DECISION AND ORDER**

Accordingly, the Department is **AFFIRMED** in part and **REVERSED** in part. The Department established that Petitioner received an overissuance of FAP benefits from November 21, 2016, through October 31, 2017. The Department did not, however, establish the amount of the overissuance.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine the amount of the overissuance of FAP benefits to Petitioner from November 21, 2016, through October 31, 2017;
2. If there is conflict or uncertainty regarding any relevant issue, such as income or expenses, follow Department policy regarding verifications by allowing Petitioner the opportunity to present information related to the relevant issue in question; and
3. Issue Petitioner a new Notice of Overissuance in accordance with Department policy.

JM/dh

  
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**John Markey**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

**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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

Kimberly Kilmer  
800 Watertower  
Big Rapids, MI 49307

**DHHS Department Rep.**

MDHHS-Recoupment  
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Mecosta County, DHHS

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**Petitioner**

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