



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: April 5, 2019  
MAHS Docket No.: 19-001947  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 March 27, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Denise Beard, Recoupment Specialist, and Aundrea Jones, Hearings Facilitator. During the hearing, a 100-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-100. The hearing was facilitated with the assistance of a Spanish interpreter.

**ISSUE**

Did the Department properly establish an overissuance of Food Assistance Program (FAP) benefits that it 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. For all times relevant to this matter, Petitioner had an open FAP benefits case with the Department and was receiving monthly FAP benefits in a group that included Petitioner, [REDACTED] (Petitioner's husband), and their child.
2. [REDACTED] had been working at [REDACTED] when he was laid off on or about November 7, 2015. Shortly thereafter, a Verification of Employment form was returned to the Department informing the Department that Jorge was on a

leave of absence and that his last paycheck was issued November 13, 2015. The form indicated that the leave of absence was indefinite. Exhibit A, pp. 7-8.

3. The Department properly removed the income from the budget used for calculating the group's FAP benefits based on the verified loss of income. Exhibit A, pp. 48-65.
4. [REDACTED] returned to work for [REDACTED] and received his first paycheck on or about December 18, 2015. Exhibit A, pp. 67-84.
5. The Department was not given notice that [REDACTED] returned to work and continued to issue Petitioner FAP benefits based on a household income of zero. Exhibit A, pp. 48-65.
6. On March 1, 2016, the Department issued to Petitioner a Spanish-language Semi-Annual Contact Report in order to gather relevant information regarding Petitioner's ongoing eligibility for FAP benefits. On March 21, 2016, Petitioner returned the completed form to the Department. The form indicated that the Department was calculating Petitioner's monthly FAP benefits on the basis of zero income and asked Petitioner if her household's income had changed from that amount. Petitioner failed to report that the household income had changed despite [REDACTED] having gone back to work months prior. Exhibit A, pp. 9-10.
7. On April 21, 2016, Petitioner submitted to the Department an application for State Emergency Relief (SER) benefits. On the application, Petitioner reported to the Department that [REDACTED] was employed full-time at [REDACTED]. Exhibit A, pp. 11-37.
8. On February 22, 2019, the Department issued to Petitioner a Notice of Overissuance informing Petitioner that the Department believed Petitioner was overissued \$1,910 in FAP benefits from February 1, 2016, through May 31, 2016. The Department labeled the overissuance a client error based on Petitioner's failure to report [REDACTED] return to work in a timely manner and her subsequent failure to report his return to work on the Semi-Annual Contact Report. Exhibit A, pp. 94-99.
9. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's action.

### **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 establish an alleged overissuance of FAP benefits to Petitioner. Petitioner's monthly FAP benefits from February 1, 2016, through May 31, 2016, were calculated based on the Department's incorrect belief that Petitioner's household income was zero when in fact the household had regular income during the entire time period. The Department's position is that the overissuance was caused by Petitioner's failure to report that her husband had returned to work in December 2015. Thus, the Department considers this to be a client error overissuance. After factoring in the household's actual income over the relevant time period, the Department asserts that Petitioner received \$1,910 more in FAP benefits than she should have.

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. A client error occurs when the client received more benefits than appropriate because the client gave incorrect or incomplete information to the Department. BAM 700, p. 7. An agency error is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 5. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, p. 1. If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source when determining the correct benefit amount. BAM 705 (January 2016), p. 8. For client error overissuances due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 720 (October 2017), p. 8.

In support of its contention that Petitioner was overissued benefits, the Department presented FAP overissuance budgets for each of the four months from February 1, 2016, through May 31, 2016. The Department calculated the benefits Petitioner should have received each month during the overissuance period based on the actual income as reflected on [REDACTED] payroll records. Based upon the evidence presented at the hearing, Petitioner definitely received an overissuance of FAP benefits from February 1, 2016, through May 31, 2016.

However, the evidence does not support the Department's conclusion that the overissuance was correctly calculated. Despite Petitioner having repeatedly asserted and previously verified that the household is responsible for utilities, including heat, the Department did not factor in the heating and utility (h/u) standard when calculating the overissuance. The exclusion of that expense, in all likelihood, would cause the Department to improperly calculate the amount of benefits Petitioner should have received during the months in question. Thus, while the Department has established that Petitioner received an overissuance of FAP benefits, it has not substantiated its conclusion that the overissuance amount was \$1,910.

Petitioner was adamant that she fulfilled the reporting obligations and should, at the very least, be granted the benefit of the 20 percent earned income deduction on the unreported earnings. The Department, however, correctly deemed this a client error overissuance and properly used the entire unreported income amount in calculating the overissuance budgets. Petitioner was informed repeatedly that she had an obligation to report when her household income changed. She failed to do so. Petitioner had the opportunity to report the income on the Semi-Annual Contact Report. Instead, she dishonestly certified that her household had no income. Thus, the Department properly did not apply the earned income deduction to the unreported income.

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

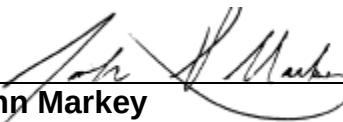
### **DECISION AND ORDER**

Accordingly, the Department is **AFFIRMED** in part and **REVERSED** in part. The Department established that Petitioner received an overissuance of FAP benefits from February 1, 2016, through May 31, 2016. 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 February 1, 2016, through May 31, 2016, while granting Petitioner the benefit of the h/u standard, where applicable; and
2. Issue Petitioner a new Notice of Overissuance in accordance with Department policy.

JM/cg

  
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**John Markey**  
Administrative Law Judge  
for Robert Gordon, 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

**Via Email:**

MDHHS-Wayne-18-Hearings  
MDHHS-Recoupment  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MAHS

**Petitioner – Via First-Class Mail:**

[REDACTED]  
[REDACTED]  
[REDACTED]