



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: May 3, 2019  
MOAHR Docket No.: 19-003330  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 May 1, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Mary Durussel, Assistance Payments Supervisor and Patrick Lynaugh, Recoupment Specialist.

**ISSUE**

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

**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 FAP recipient for the period of January 1, 2015 through April 30, 2015 (overissuance period) (Exhibit A, p 7).
2. On October 6, 2014, Petitioner obtained employment (Exhibit A, p. 17).
3. On October 17, 2014, Petitioner received her first paycheck and continued to receive income throughout the overissuance period (Exhibit A, pp. 17-23).
4. On November 10, 2014, the Department sent Petitioner a Notice of Case Action (NOCA) informing her of her reporting requirements (Exhibit A, pp. 54-58).

5. On March 20, 2019, the Department sent Petitioner a Notice of Overissuance informing her that she had been overissued FAP benefits in the amount of \$712 during the period of January 1, 2015 through April 30, 2015 (Exhibit A, pp. 1-5).
6. On [REDACTED], 2019, Petitioner submitted a request for hearing disputing the Department's actions.

### **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, Petitioner obtained new employment in October 2014. The Department testified that Petitioner failed to report the change employment/income. As a result, the income was not budgeted, and Petitioner received an overissuance in FAP benefits during the period of January 1, 2015 through April 30, 2015 due to client error.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2018), p. 1. A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 6. An agency error is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 4. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705 (October 2018), p. 6. 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, 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. 10.

In support of its argument that the overissuance was due to client error, the Department presented a NOCA sent to Petitioner on November 10, 2014. Petitioner was advised her FAP benefits were based on an earned income amount of \$0. Petitioner was also notified that she was a Simplified Reporter and that she needed to report when her household income exceeded \$1,265. The Department presented employment

verification from Petitioner's employment that began in October 2014. Beginning in November 2014, and continuing throughout the overissuance period, Petitioner's income exceeded \$1,265.

In support of its contention that Petitioner was overissued benefits, the Department presented FAP overissuance budgets for the period of January 1, 2015 through April 30, 2015 (Exhibit A, pp. 8-16). The Department calculated the benefits Petitioner should have received each month during the overissuance period based on the addition of Petitioner's unreported income. The Department received verification of Petitioner's income from Petitioner's employer and used it to calculate her actual income during the overissuance period (Exhibit A, pp. 17-23). The Department also presented Petitioner's FAP Benefit Summary Inquiry (Exhibit A, p. 7). The Benefit Summary Inquiry shows Petitioner was issued FAP benefits in the amount of \$194 per month for the period of January 1, 2015 through April 30, 2015.

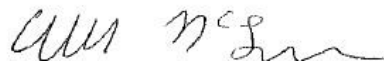
Petitioner testified that she believed she did not receive \$194 in FAP benefits per month. Petitioner contended that her FAP benefit amount was only \$16. Petitioner acknowledged she did not report the income to the Department. Petitioner stated she stopped utilizing her FAP benefits and took no action to let her FAP benefit case "cancel out." Petitioner stated she was not aware of her reporting responsibilities.

The Department presented sufficient evidence to establish that it properly notified Petitioner of her reporting responsibilities, and that she failed to report her income. Therefore, the overissuance was a result of client error. The Department also presented sufficient evidence to establish Petitioner was overissued FAP benefits in the amount of \$712 during the period of January 1, 2015 through April 30, 2015. The Benefit Summary Inquiry clearly shows Petitioner received \$194 in FAP benefits per month. Thus, the Department is entitled to recoup/collect \$712 in overissued FAP benefits.

### **DECISION AND ORDER**

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 Petitioner was overissued FAP benefits in the amount of \$712 during the period of January 1, 2015 through April 30, 2015. Accordingly, the Department's decision is **AFFIRMED**.

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**Ellen McLemore**  
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 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 Email:**

MDHHS-Iosco-Hearings  
MDHHS-Recoupment-Hearings  
M. Holden  
D. Sweeney  
BSC1- Hearing Decisions  
MOAHR

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

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