



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] MI [REDACTED]

Date Mailed: May 31, 2019
MOAHR Docket No.: 19-003995
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

HEARING DECISION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on May 21, 2019, from Lansing, Michigan. The Department was represented by Annette Fullerton, Recoupment Specialist. The Respondent was represented by herself. Department Exhibit 1, pp. 1-112 was received and admitted.

ISSUE

Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. Respondent was a recipient of FAP benefits from the Department.
2. Petitioner resides at [REDACTED] Michigan [REDACTED]
3. The Department alleges Respondent received a FAP OI during the period February 1, 2016, through February 28, 2018, due to Respondent's error.
4. The Department alleges that Respondent received \$11,127 OI that is still due and owing to the Department.

5. On January 11, 2016, [REDACTED] [REDACTED] who is the father of one of Petitioner's children, wrote an email to his employer that stated his address is [REDACTED] [REDACTED], Michigan [REDACTED] (Ex.1, p. 68)
6. On January 4, 2016, Petitioner entered into a lease agreement with [REDACTED] [REDACTED] to rent a home located at [REDACTED] Michigan [REDACTED] (Ex., 1, pp. 69-76)

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), and Department of Health and Human Services Reference Tables Manual (RFT).

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 to .3015.

Client Error

All Programs

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 (January 2016)

Parents and Children

Children include natural, step and adopted children.

Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212 (October 2015)

Additionally, the Department presented an email dated January 11, 2016, from [REDACTED] [REDACTED] that states that his address is [REDACTED] Michigan [REDACTED] (Ex.1, p.68) A lease agreement was also provided showing that Petitioner entered into a lease agreement on January 4, 2016, with [REDACTED] [REDACTED] to rent a home located at [REDACTED] [REDACTED], Michigan [REDACTED] (Ex., 1, pp. 69-76)

Petitioner credibly testified at hearing that her address is [REDACTED] [REDACTED], Michigan [REDACTED] and that she lived there with her children during the fraud period but [REDACTED] [REDACTED] did not reside there and that is why she signed a lease agreement.(Ex.

1, pp. 69-76) Petitioner could not explain why [REDACTED] [REDACTED] gave the [REDACTED] address to his employer as his residence on January 11, 2016.

The Department presented no other proof other than one email to establish that [REDACTED] [REDACTED] was residing with Petitioner. The Department made reference to a Fee Investigation, but no evidence was presented to establish what facts and evidence were gathered in the fee investigation. The Department made reference to information from the Muskegon County Friend of the Court that may establish that [REDACTED] [REDACTED] was residing with Petitioner, but no evidence was presented to confirm that contention. No information from the secretary of state was presented to establish where [REDACTED] [REDACTED] was residing during the fraud period. [REDACTED] [REDACTED] was not called to testify at hearing.

The Department failed to present sufficient evidence to establish that [REDACTED] [REDACTED] was residing with Petitioner at [REDACTED], Michigan during the fraud period. BEM 212, 7 CFR 273(1)(a) The Department failed to present sufficient evidence to support that an overissuance occurred. BAM 700, 7 CFR 273.16

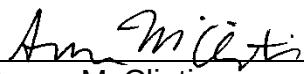
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did not** establish a FAP benefit OI to Respondent.

DECISION AND ORDER

Accordingly, the Department is REVERSED.

The Department is ORDERED to delete the overissuance and cease any collection actions against Petitioner.

AM/nr



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

DHHS

Jackie Stempel
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Petitioner

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